S. HRG. 98-589

IMPACT OF PROPOSED REGULATORY AUTHORITY OF THE OFFICE OF FEDERAL PROCUREMENT POLICY ON NATIONAL DEFENSE AND RELATED GOVERNMENT ACTIVITIES

HEARING

BEFORE THE

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UNITED STATES SENATE

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IMPACT OF PROPOSED REGULATORY AUTHORITY OF THE OFFICE OF FEDERAL PROCUREMENT POLICY ON NATIONAL DEFENSE AND RELATED GOVERNMENT ACTIVITIES

WEDNESDAY, OCTOBER 19, 1983

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C.

The committee met in open session, pursuant to notice, at 10:07 a.m., in room SD–138, Dirksen Senate Office Building, Senator John Tower (chairman) presiding.

Members present: Senators Tower, Thurmond, Warner, Cohen, Evans, and Nunn.

Staff present: James F. McGovern, staff director and chief counsel; James G. Roche, staff director for the minority; Alan R. Yuspeh, general counsel; Paul C. Besozzi, minority counsel; George K. Johnson, Jr., professional staff member; Marie Fabrizio Dickinson and Toni D. White, staff assistants.

Also present: John Campbell, assistant to Senator Warner; Andy McCloud and Lisa Marchese, assistants to Senator Evans; Ron Kelly, assistant to Senator Humphrey; Robert Savitt, assistant to Senator Cohen; John Etherton, assistant to Senator Jepsen; Hank Steenstra, assistant to Senator Quayle; Susan Collins, assistant to Senator Cohen; Bill Montalto and Jeff Minsky, assistants to Senator Cohen.

OPENING STATEMENT BY SENATOR JOHN TOWER, CHAIRMAN

Chairman TOWER. The committee will come to order.

The committee meets this morning to consider the potential impact on national security of permitting the Administrator of the Office of Federal Procurement Policy [OFPP] to prescribe Government-wide policies, regulations, procedures, and forms for procurement.

The Committee on Governmental Affairs has reported legislation, S. 1001, which would confer such authority on OFPP. Similar legislation has already passed the House of Representatives.

Though this legislation has received little attention, I am greatly concerned that if the new authority is established, it could have serious effects on the management of our national defense.

Though I will closely listen to all of our witnesses this morning, I have convened this hearing because it appears to me that granting regulatory authority to OFPP is unnecessary and unwise. I have always thought sensible organizational practice requires an entity with accountability and responsibility for certain missions should also have the authority to perform those missions.

I think it would be a great mistake to withdraw some of that authority from the Defense Department and place it in a small policy group at the Office of Management and Budget, when such a group would have no accountability or responsibility for national defense or for preserving our national security.

In addition, the Defense Department has the largest procurement community of any Federal agency. Notwithstanding some problems that inevitably arise in any organization as large as DOD, the general consensus is the DOD procurement capability is the most sophisticated in the Federal Government.

There are literally thousands of career military personnel and civilians who have devoted part or all of their lifetime work to the acquisition of weapons systems and defense material.

I can see no logical sense to giving a small group of policy planners outside of the Department of Defense the authority to direct policy for a large, experienced, career-oriented acquisition community within the Department.

I am also greatly concerned that the regulatory authority proposal in S. 1001 would undermine the capability of the Congress as a whole and the Committees on Armed Services to hold the Department of Defense accountable for procurement management problems or mission accomplishment.

When the Secretary of Defense appears before the Armed Services Committee to discuss acquisition problems, I want him to be accountable and responsible for those problems. I don't want him to be able to lay the responsibility on the OFPP Administrator.

It is noteworthy that the administration and all of the regulatory entities now responsible for procurement—the Defense Department, the National Aeronautics and Space Administration [NASA], and the General Services Administation [GSA]—oppose regulatory authority for OFPP.

I also understand that the present Administrator of OFPP does not believe he needs this authority. It is highly unusual for Congress to enact laws that are so directly opposed to the views of every involved governmental agency.

I am aware that the sponsors of S. 1001 are proud of a long list of associations and other entities which support regulatory authority for OFPP. But there is hardly unanimity on this subject.

I have looked at the responses to a questionnaire distributed by the Governmental Affairs Committee on this issue, and negative responses on regulatory authority were received from DOD, GSA, the Department of Energy, the Department of Housing and Urban Development, the Department of Agriculture, the Veterans' Administration, the Department of Transportation, NASA, the National Academy of Public Administration, the National Security Industrial Association, the Aerospace Industries Association, the Electronic Industries Association, the Committee on Federal Procurement of Architectural/Engineering Services, the Associated General Contractors of America, and the American Consulting Engineers Council.

It appears the opposition is more extensive than the support of OFPP regulatory authority.

Finally, I would like to note that OFPP had the type of regulatory authority some now wish to restore from its creation in 1974 until 1979. When OFPP was reauthorized in 1979, that regulatory authority was withdrawn. Why?

Let me quote briefly from the report of the House Government Operations Committee. That committee, which is about the most supportive audience OFPP has, said:

One, OFPP has devoted an inordinate amount of its resources to matters which at best are ancillary to its basic procurement responsibilities, and which at worst exceed its statutory authority.

Two, OFPP has often injected itself into a program-by-program, transaction-by-transaction review of procurement by executive agencies.

Three, OFPP has assumed the role of central Government-wide manager of the existing procurement activities, at the expense of basic fundamental procurement reforms so vitally needed by the public and private sectors.

If this was the record OFPP established with regulatory authority, why should we reestablish that authority?

Our first witnesses this morning will appear as a panel. They are Mr. Joseph Wright, Deputy Director of the Office of Management and Budget; Dr. Richard DeLauer, Under Secretary of Defense for Research and Engineering; and Mr. James Beggs, Administrator of NASA.

Before we proceed, Senator Cohen has been involved in this legislation in the Governmental Affairs Committee and I would like to call on him for any statement he wishes to make.

Senator COHEN. Thank you, Mr. Chairman.

I want to commend you for holding this hearing and for your usually characteristic objective opening statement on the legislation that is now pending.

Chairman TOWER. I am glad you recognize its total pristine objectivity.

Senator COHEN. As I mentioned, it is characteristic of your comments.

Mr. Chairman, I think it would be useful if I provided the committee with some background on the Office of Federal Procurement Policy and on the Governmental Affairs Committee's thorough consideration of S. 1001, the reauthorization legislation.

Many of my colleagues may be unfamiliar with the OFPP and the crucial role it plays in promoting reforms in the way our Government purchases goods and services. The OFPP is a small office which Congress established in 1974 to provide overall direction of Federal procurement policy. It serves as a link among the private sector, the Congress, and the executive branch in the continuing effort to improve Federal contracting procedures.

Several months ago, I introduced a simple reauthorization bill, S. 1001, to serve as the starting point for consideration of the appropriate scope and authority of this Office.

On April 27, I chaired a hearing to consider the OFPP reauthorization. With the exception of the administration witness, all who testified favored restoring regulatory authority to the OFPP.

In addition to holding the hearing, I solicited the views of the procuring agencies, the General Accounting Office, contracting associations, and former members of the Commission on Government Procurement. The overwhelming majority of the responses I received favored vesting regulatory authority in the OFPP Administrator. In fact, some expressed the belief that the Office was not worth reauthorizing without regulatory authority.

The provisions of S. 1001, as reported, reflect these extensive consultations with Federal officials, procurement experts, Government contractors.

The Oversight of Government Management Subcommittee fully considered the objections to S. 1001 raised by the Department of Defense. I wrote to Defense officials three times—on April 7, May 25, and July 12—to request comments on the drafts of the reauthorization, and my staff met at length with DOD staff on June 3. Some provisions of S. 1001, as reported, were included to accommodate the Pentagon's concerns. For example, I included a provision recognizing the role of the Defense Department, NASA, and GSA in the development and maintenance of the Federal acquisition regulation [FAR] system.

The three agencies remain opposed to granting OFPP and regulatory authority, however.

Let me be clear on what regulatory authority means. If DOD, NASA, and GSA are successful in maintaining the FAR system, OFPP's regulatory authority would not be used. It would remain a club in the closet, only to be brought out when there is conflict between the regulation-writing agencies, or as is more common, when agencies refuse to take action on a procurement reform. If, however, the agencies fail to agree or act on a Government-wide procurement issue, the OFPP could issue the regulation.

For this reason, S. 1001 states that the Administrator "may," instead of "shall," issue regulations.

The Department of Defense has raised the specter of an OFPP, wildly out of control, issuing regulations that would jeopardize our national security. Indeed, the chairman's opening remarks talked about an office that has no accountability, no responsibility for national defense, just this small office which is going to take a ball and chain and start to tear down and break up the national security of this country.

This argument ignores the facts and the safeguards contained in my bill.

The OFPP is not an independent regulatory agency that could issue regulations at will. It is part of the Executive Office of the President, and contrary to the notion it has no accountability and responsibility, the OFPP Administrator is appointed by the President, confirmed by the Senate, and accountable to the Director of the Office of Management and Budget as well as to the President and Congress.

Let me just tell you about a couple of the restrictions on this particular office. It is a small office that relies heavily on interagency task forces—frequently staffed by DOD officials—to develop a consensus on Federal procurement policies.

It cannot interfere with any procurement regulation which the Department of Defense determines is necessary because of its unique needs. The OFPP's role is limited to regulations which are Government-wide in application.

It cannot interfere with any agency's decision on a specific contract. The Office could not dictate to the Department of Defense which paper clip or weapon system it should purchase.

I cannot imagine how this carefully circumscribed authority could in any way jeopardize the ability of the Department of Defense to perform its mission.

My legislation contains another safeguard against the OFPP abusing its regulatory power. The bill requires the OFPP to submit any major policy or regulation to the Senate Governmental Affairs Committee and the House Government Operations Committee 30 days prior to its effective date.

I have offered to broaden this reporting language to permit any congressional committee, including the Senate Armed Services Committee, to review proposed OFPP regulations.

This mechanism would permit Congress to block any ill-conceived Government-wide regulation before it went into effect.

What makes this battle over OFPP significant is the potential savings at stake. The Federal Government spent more than half of its discretionary budget last fiscal year on the direct purchase of goods and services from the private sector. I am convinced that significant economies can be realized through the effective implementation of procurement reforms, particularly in the DOD, which comprises approximately 80 percent of the Federal procurement budget. The Congressional Budget Office found, for example, that the increased use of competition in contracting alone would save over $2 billion annually.

Without a strong OFPP to serve as a catalyst for procurement reform, however, these savings will never be realized. The individual procuring agencies have not been, and cannot be expected to do, a meaningful source of procurement reform. Their energies must, out of necessity, be channeled to make procurement decisions on a day-to-day basis. In contrast, the OFPP has a Government-wide perspective, insulated from parochial interests, and is able to synthesize the interests of all the individual procurement agencies, the Congress, and the vendor community.

Given DOD's resistance, however, procurement reform has proved to be tantamount to the task facing Sisyphus as he pushed the rock uphill, never to reach the top.

The late Senator Scoop Jackson, whose knowledge of the Department of Defense was unsurpassed, had the perseverance in the 1960's to battle the Department and at least get the stone rolling. Senator Jackson was the author of the legislation establishing the Commission on Government Procurement, which first recommended the creation of a central procurement policy office.

Senator Jackson supported the Commission's work, stating:

> The time has come for a close, hard look at the statutes, regulations, procedures and practices governing Federal procurement. There are loopholes in the laws, inconsistencies in the regulations, conflicts in the procedures, and variations in the practices. The mountain of procurement paperwork grows taller, the maze of procedures more complicated with each passing day.

Unfortunately, Senator Jackson's statement still rings true. The need for reform is today even greater than when he made his statement years ago.

During the past decade, the dollar value of Government contracts has tripled to over $200 billion, and more than 130,000 Federal employees are now involved in the procurement process.

The magnitude and budgetary significance of Federal contracting, plus the lack of progress in reforming the system, mandate the existence of a strong procurement policy office.

Uniformity in Federal procurement procedures is a highly desirable goal. While some agency-specific regulations will always be necessary, basic contracting procedures should not vary widely from agency to agency.

For a small contractor trying to do business with the Federal Government, the bewildering maze of procurement regulations is the major obstacle.

The new FAR system is a giant leap forward in simplifying, streamlining, and consolidating procurement regulations. But, as the General Accounting Office points out, regulatory authority for the OFPP is necessary to prevent the FAR from crumbling.

The reauthorization of the OFPP—with regulatory authority—enjoys widespread support. S. 1001 was reported unanimously by the Governmental Affairs Committee, and is cosponsored by Senators Roth, Chiles, Danforth, Levin, Bingaman, Percy, Sasser, Eagleton, Pryor, Proxmire, Durenberger, and Cochran. The bill has been strongly endorsed by the General Accounting Office, the U.S. Chamber of Commerce, the American Bar Association, the three former Administrators of the OFPP, former members of the Commission on Government Procurement, and numerous contracting associations. The House passed the companion bill by a voice vote.

I hope that the committee will support procurement reform by backing the OFPP reauthorization and that S. 1001 will be brought to the Senate floor without further delay.

I have other comments which I will include in the record, Mr. Chairman, and I also have letters from organizations, agencies and contractors that outweigh those listed by the chairman, which I will ask to be included in the record. (See app. A, p. 65.)

I look forward to the testimony from OMB, DOD and NASA this morning.

Chairman TOWER. Thank you, Senator Cohen.

Gentlemen, you may have prepared statements which you would like to submit in their entirety for inclusion in the record and summarize your statements in the interest of time.

I would suggest if you do have a lengthy prepared statement, we will include your entire statement in the record. We want to give as much time as possible to questions.

We will hear from each witness and then proceed to questions.

The first witness this morning is Mr. Joseph Wright, the Deputy Director of the Office of Management and Budget.

Mr. Wright?

STATEMENT OF HON. JOSEPH R. WRIGHT, JR., DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. WRIGHT. Thank you, Mr. Chairman.

I have a very short 3-page statement which I would like to insert in the record per your suggestion and would simply summarize by stating that I have already testified for the administration in both the Senate and the House.

I agree with many of the statements that have been made so far in terms of the importance of the reauthorization of OFPP, but do not believe OFPP needs regulatory authority in order to conduct its functions.

We have not had it for the last 4 years, and I think the Office has done a very good job in terms of developing the administration's proposal for a uniform Federal procurement system as well as coming out with the FAR which will be effective on April 1, 1984.

For that standpoint, I believe OFPP should be reauthorized, but do not believe we need the regulatory authority.

Thank you.

[The prepared statement of Mr. Wright follows:]

PREPARED STATEMENT OF HON. JOSEPH R. WRIGHT, JR., DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. Chairman, Members of the Committee: I am pleased to appear before you today to express the Administration's views on the question of regulatory authority for the Office of Federal Procurement Policy (OFPP), and the impact this authority might have on the national security mission of the Department of Defense.

As you know, I testified for the administration in both the Senate and the House earlier this year in support of reauthorization of OFPP, but without regulatory authority. OFPP is a key element in the effort to improve Federal procurement, a vital part of this Administration's management reform efforts. However, it does not require regulatory authority to conduct its mission effectively. Regulatory authority should be limited to the three agencies that are responsible for issuing and maintaining procurement regulations—DOD, NASA and GSA.

If OFPP had regulatory authority, it would be difficult with its small staff to be heavily involved in the regulatory process. We only asked that the reauthorizing legislation clearly give the Administrator of OFPP policy directive authority to ensure continued improvements in the procurement process.

I note that OFPP was given regulatory authority when it was first established in 1974, in response to a recommendation of the Commission on Government Procurement. It was to be a focal point in the Executive Branch for development and coordination of Government-wide—and only Government-wide procurement policy and related matters. This regulatory authority ended in 1979 and I should note that OFPP did not operate any differently with regulatory authority than without it, and substantial progress has been made in recent years.

S. 1001 would reauthorize OFPP with policy directive authority, which we support. It would also reinstate regulatory authority which we do not feel is appropriate. S. 1001 contains several safeguards which preclude OFPP from acting arbitrarily and unilaterally in any matter. For example, OFPP must consult with agencies affected by its directives; it must notify the Congress at least 30 days in advance of policy issuances; it must seek public comment on proposed new or revised policies; it is prohibited from impairing or interfering with executive agencies' determinations of their needs; and it is prohibited from interfering in any specific contract actions. And in a very practical vein, moreover, the limited size of OFPP's staff (only about 15 professional procurement specialists) is an effective block to any significant involvement in detailed regulatory matters.

In summary, Mr. Chairman, the Administration's position is still that regulatory authority is not needed. However, as I stated before, OFPP has an important role in this Administration's Government-wide management reform programs, and should be reauthorized.

I shall be pleased to answer any questions.

Chairman TOWER. Our next witness is Dr. Richard DeLauer, Under Secretary of Defense for Research and Engineering.

STATEMENT OF HON. RICHARD D. DeLAUER, UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING

Dr. DeLauer. Thank you, Mr. Chairman, for holding this hearing. Notwithstanding the comments by my friend, Senator Cohen, with whom I have worked on many occasions, the previous hearings did not really consider everything that needed to be said on the subject.

Even though our staffs worked together, there were issues that were not covered. So, Mr. Chairman, I appreciate your taking the time, and the Members taking their time, to listen to additional testimony this morning.

To begin with, I have a copy of a letter that Secretary Weinberger has sent to you in which he states his views on this proposed change in the authority of the Office of Federal Procurement Policy. I won't read it in its entirety. I think the Members have a copy, but it starts out with the obvious: "It is the statutory responsibility of the Secretary of Defense to manage defense acquisition." It continues by saying that the proposed legislation would dilute the responsibility for defense acquisition and make it impossible for Congress and the American people to hold the Secretary of Defense accountable for meeting our national security requirements.

The letter goes on to say that the proposal requires participation in the Defense Acquisition process by an agency with no national security expertise or statutory responsibility for America's defense. It continues with a strong statement that this proposal could unfavorably impact our national security in a major way. That is the opinion of the Secretary of Defense.

Finally, the Secretary of Defense makes the observation that you did, Mr. Chairman, that Congress made the right decision in 1979 when it removed the regulatory authority of OFPP.

[Secretary Weinberger's letter to Senator Tower follows:]

The Secretary of Defense,
Washington, The District of Columbia,
October 18, 1983.

Hon. John Tower,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, D.C.

Dear John: It is the statutory responsibility of the Secretary of Defense to manage defense acquisition. The proposal to give regulatory authority to the Office of Federal Procurement Policy (OFPP) dilutes that responsibility and would make it impossible for Congress and the American people to hold the Secretary of Defense accountable for meeting our national security requirements. The proposal would put the OFPP in a position to dictate how the United States should build forces to meet its defense needs.

Our nation is currently in the midst of a program to rebuild America's defenses and to restore the balance of power necessary for deterrence to continue to work to preserve peace. Acquiring the right forces at the right time is essential to maintaining that delicate balance of power. The Defense Department has a comprehensive programing and budgeting process that develops the capabilities necessary to meet the threat, execute our military strategy, and preserve deterrence. This proposal requires participation in that process by an agency with no national security expertise or statutory responsibility for America's defense.

I must also question the economy of adding another bureaucratic layer to a procurement system that is already well regulated. Congress has recently created a DOD Inspector General and an independent operational testing organization. Additionally, the Defense Department is currently implementing a wide array of management reforms resulting from the Carlucci initiatives that this committee has so wholeheartedly supported. We cannot afford to give the OFPP a role that will require an expanded agency to duplicate the work of existing agencies and interfere with ongoing reforms. It could unfavorably impact our national security in a major way.

Congress made the right decision in 1979 when it removed the regulatory authority of the OFPP. It would be a grievous mistake to revise that decision in 1983.

Sincerely,

CASPAR WEINBERGER.

Dr. DELAUER. Now, Mr. Chairman, I will summarize my formal statement, which you have all been provided copies of, very quickly since most of it was covered in your opening statement.

I appreciate your making my statement for me, however, I would like to add the fact that I personally have participated more in this process——

Chairman TOWER. Let the record show that Dr. DeLauer did not prepare my statement. [Laughter.]

Dr. DELAUER. Actually, the Congress prepared both of our statements, Mr. Chairman, because they held hearings on this problem in 1979 in which I participated as a representative of industry. As noted by Senator Cohen, industry was supportive of the reauthorization of OFPP in 1979.

My testimony in 1979 was supportive of the policy aspects of OFPP. We urged it as an industry. We urged that OFPP continue the ongoing effort of the procurement institute, which is absolutely necessary. We also supported OFPP's role as an arbitrator in cases where there were differences of opinion between executive agencies from an overall Federal procurement policy standpoint. The record has my testimony on that.

I also participated in the Commission on Government Procurement. At that time I was the chairman of the technical part of the Aerospace Industry Association as well as the whole major systems acquisition portion. As noted by Senator Cohen, the Commission on Government Procurement was sponsored by Senator Jackson.

This is not a new subject to me since I participated in 1973 and 1974 in setting up the Commission. I have been consistent on this issue in both my testimony and also working for the Commission. I have always said you ought to put the authority where the responsibility lies so you can hold people accountable.

A point was raised earlier, that the proposed legislation permits a review, an oversight, by committees of Congress. I believe that to be a two-edged sword. In some cases it can be very positive, as pointed out by Senator Cohen. But by the same token, it permits committees without responsibility for defense to block regulations that aid us in doing our job. So, to set the record straight, I view this as a weakness in the proposed legislation.

With that, Mr. Chairman, why don't I let Jim Beggs give you the NASA point of view and open it up to questions.

Thank you.

[The prepared statement of Dr. DeLauer follows:]

PREPARED STATEMENT OF RICHARD D. DELAUER, UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING

Mr. Chairman and members of the committee, thank you, Mr. Chairman, for providing this opportunity to discuss S. 1001, a bill to reauthorize the Office of Federal Procurement Policy. The Department of Defense has had an intense interest in the subject of this bill because of the potential negative impact it may have on the conduct of our acquisition activities which are so vital to accomplishment of our mission.

The mission of DOD can be roughly divided into two major and interdependent functions. The first of these functions is the conduct of military operations. The second function is management of the acquisition process, including identification of requirements, and selection and deployment of weapon systems. S. 1001 contains a definition of procurement which could be interpreted to include the requirements determination process. It provides OFPP regulatory authority over Government-wide procurement policies, regulations, procedures, and forms. Accountability for the two functions I have described should continue to reside in the Secretary of Defense. Dividing responsibility for them could result in a loss of support and readiness of our military forces.

DOD's acquisition activities in fiscal year 1982 accounted for $125 billion through the placement of approximately 13 million contract actions. These contracts were placed or administered by 46,000 employees of the Department. Roughly 5 percent of total Federal procurement is accomplished by DOD. By any standard, our procurement activities are substantial and represent a large part of our daily activities.

Initially authorized in 1974 for five years, OFPP was placed in the Office of Management and Budget (OMB). It was given authority to provide overall direction of Federal procurement policy and directive authority to prescribe procurement policies, regulations, procedures, and forms for the executive branch agencies. In accord with recommendations made by the Commission on Government Procurement, OFPP was authorized and has continued its work ever since with a small staff. Regulatory authority was rescinded by Congress in reauthorization in 1979. Congress took such action because, as stated in House Report 96–178, "OFPP has often injected itself into a program-by-program, transaction-by-transaction review of procurement by executive agencies." The report went on to say that, "It appears from these findings that OFPP has assumed the role of central government-wide manager of existing procurement activities, at the expense of basic fundamental procurement reforms vitally needed by the public and private sectors." We do not believe that Congress ever intended OFPP to regulate the daily procurement activities of the Department of Defense. It is apparent from its small staffing that it could not do so.

DOD opposes regulatory authority for OFPP but not because it is opposed to procurement reform. On the contrary, DOD's record clearly demonstrates it is committed to procurement reform. Examples of DOD's commitment include the following actions:

> Initiation of an acquisition improvement program including plans to: increase competition; simplify the acquisition process; maximize use of multiyear procurement; improve readiness and support; and utilize economic (stable) production rates.
>
> Contributing the preponderant effort on the Federal Acquisition Regulation (FAR) in conjunction with NASA and GSA.
>
> Drafting, in conjunction with OFPP, and supporting implementation of Executive Order 12352, Federal procurement reforms, by providing flag officers or executive service personnel to chair four of the six implementing task groups.
>
> Working with OFPP and other executive agencies to develop procedures for the effective implementation of OFPP policy letters.

I have noted that acquisition as defined in S. 1001 includes the traditional procurement function, and could be interpreted to include the requirements determination process. The requirements determination process is a complex multi-disciplined function described in a multiplicity of Defense Department directives. The authority of the SecDef to contract is delegated to the services through the Defense acquisition regulation. The formulation of acquisition policy is retained by the Secretary who exercises authority through issuance of procurement regulations. DOD is one of three executive agencies authorized to issue procurement regulations. In addition to the Secretary of Defense, only the Administrators of the General Services Administration and the National Aeronautical and Space Administration have such authority.

DOD's national security mission is accomplished almost entirely through acquisition of supplies and services used by the military departments. Providing regulatory authority to another office, i.e., the OFPP, could impact on DOD's ability to perform its important mission. For example, S. 1001 contains provisions for its administrator to ". . . prescribe government-wide policies, regulations, procedures, and forms which the administrator considers appropriate and which shall be followed by such executive agencies . . ." Inserting another level of authority, such as OFPP, into the procurement policy formulation and contracting processes unnecessarily dilutes the accountability of the Secretary of Defense. Inserting another player, especially one without operational accountability or responsibility, into the requirements determination process, which is so vital to mission accomplishment, is intolerable.

The regulatory authority proposed for OFPP is inconsistent with our perception of the role of OFPP in Federal procurement. DOD strongly believes regulatory authority must be exercised by those responsible for mission accomplishment. If the Secretary of Defense is to be held accountable to the President, the Congress, and the taxpayers, he must be provided appropriate authority to exercise his responsibilities.

In rescinding OFPP's initial regulatory authority, we believe Congress recognized that the role of OFPP should be restricted to pursuit of federal procurement reform as an overseer of the development and application of broad procurement policy. Implementation of broad policy should be restricted to heads of agencies who are held accountable for mission accomplishment. OFPP should serve as a focal point within the executive branch in government-wide procurement and procurement related matters. This definition of OFPP responsibility does not require regulatory authority. The Deputy Director of OMB, in testimony earlier this year stated that OMB did not seek regulatory authority for OFPP because OFPP can function effectively without it, and strong management authorities exist now within OMB and additional authority is not necessary for OMB to fulfill its mission. He also stated regulatory authority could create unnecessary tension between OFPP and the regulatory agencies. We, in DOD, strongly endorse these statements.

In summary, we support reauthorization of the Office of Federal Procurement Policy, but firmly believe that regulatory authority is not only unnecessary, but represents a needless impediment to effective conduct of its intended function. We want to reiterate testimony provided by Mr. Joseph Wright earlier this year when he stated regulatory authority could create tension between OFPP and the regulatory agencies. Should such authority be legislated and tension materialize, it will obscure the important role of OFPP in procurement reform.

This concludes my formal statement. I would be pleased to respond to your questions.

Chairman TOWER. Our next witness is Mr. James Beggs, the Administrator of the National Aeronautics and Space Administration.

STATEMENT OF HON. JAMES M. BEGGS, ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Mr. BEGGS. Thank you, Mr. Chairman.

I do appreciate the opportunity to put NASA on the record on this subject. We, of course, have a vital interest in S. 1001.

NASA is 25 years old this year. As this committee knows, we were instructed by our original statute to carry out our space programs in concert with the scientific, educational and industrial communities of this country and we have done that for a quarter of a century, including the international community. Today, over 86 percent of the monies appropriated to NASA for our programs flow through the agency under the procurement process to the private sector, and we are proud of the record that we have had over the years in doing that.

We have testified before on this bill and our views are known. We clearly support the reauthorization of OFPP for an additional 5 years. We have worked very closely with that Office over the last 4 years, and before, and we think the relationship there has been very good.

The gargantuan job of putting together the Federal acquisition regulations has now been accomplished. We are now in the process, that is DOD, NASA, GSA and other agencies that will use that FAR regulation, of providing the transition training and the necessary implementation to put that regulation into full effect. We think the machinery for the maintenance and amendment of that regulation has been well established and the procedures for its operation have been well developed. So, that regulation should in and of itself serve the country well and serve my agency well in being able to follow the practices that are required to make sure that our procurement is done properly and well, and we think it will.

We do not believe that providing a relatively small office in OMB with authority to impose additional detailed regulations is neither required nor desired. Therefore, we do oppose the inclusion of regulatory authority for the Office, but, of course, support the extension of the authorization for the Office in general, one which for those other purposes I think has served us well.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Beggs follows:]

PREPARED STATEMENT OF JAMES M. BEGGS, ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you today to express our views on S. 1001, which would authorize the Office of Federal Procurement Policy for an additional five years.

Twenty-five years ago NASA was established to carry out a National space program in concert with the scientific, educational and industrial communities of the United States. This program has since expanded to include cooperative efforts of an international nature. During this quarter century NASA has relied almost wholly on the private sector of our economy to fulfill our program needs and carry out our mission. As a result, today 86 percent of the monies appropriated to us by the Congress for NASA programs flow to the private sector for execution through our procurement process.

NASA clearly supports the reauthorization of OFPP for an additional five years in its present form under its most recent authority. The Office has proven its worth in many areas and has become a key element in the Federal procurement system. This Office performs best when it functions as envisioned by the Commission on Government Procurement as one, high in competence and small in size, placed in the executive branch at a level where it can oversee the development and application of executive branch procurement policy. In our view this Office should, as the most recent statute requires, provide overall leadership in the development and implementation of procurement policies and the coordination of programs to improve the quality and performance of procurement personnel. Frequently, the policy matters in which OFPP is engaged are broader than pure procurement issues and range across several functions of an agency such as project management, financial management commercial/industrial activities or the role of federally funded research and Development Centers. In matters of this nature OFPP can and does act as a focal point, high in the executive branch, to address all facets of an issue, consider a diversity of views and coalesce balanced policies.

There is, however, a significant difference between policy and regulation. While policy sets a definite course of action as a guide in determining present/future decisions, regulation is far more precise, in greater detail, and is in large measure the day-to-day operational means of executing the guidelines established by policy.

OFPP is not a regulatory office by design, nature, composition or size. In our judgment it was never intended to be, nor should it. Its position within the OMB cloaks the Office with all the authority and tools it needs to carry out its appropriate role. Thus we propose that OFPP function, as it has successfully for the past four years, focusing its efforts on top-level policy which:

Assists in the formulation and enactment of new legislation;

Opposes the continuation or enactment of inappropriate legislation;

Issues broad acquisition policies, leaving detailed implementation to the agencies;

Arbitrates disputes between agencies;

Presents and supports Executive Branch acquisition policy requirements before Congress.

Public Law 96–83 of October 10, 1979, which reauthorized OFPP for an additional four years, contained provisions generally reflecting these priorities and provided a basis for realization of significant accomplishments in the field of procurement reform. I believe that the 1979 amendments to the Office of Federal Procurement Policy Act were enacted after careful examination and assessment of the first five years performance of OFPP and have been well validated by the significant progress achieved in the subsequent four years in its more sharply defined role. For example:

Executive Order 12352 of March 17, 1982, has provided the basis under which coordinated and concerted procurement reform actions are underway under the leadership of OFPP.

The monumental task of developing and publishing a Federal Acquisition Regulation has been accomplished by the procuring agencies and transition training is in process. Furthermore the machinery for maintenance and amendment of this regulation has been established and procedures for its operation have been developed.

A revision of OMB Circular A–76 covering Industrial/Commercial Activities has been coordinated and published.

For the first time there is a uniform Government-wide policy on suspension and debarment of contractors developed in close coordination between OFPP and the major agencies most involved.

All of these major accomplishments were achieved by the procuring agencies and OFPP in concern with an OFPP as presently authorized.

In NASA's opinion the accomplishments achieved under the statutory redirection of OFPP in 1979 demonstrate that the balanced roles of OFPP and the major procuring agencies in the field of leadership, coordination, policy and regulation is a successful combination which should not be altered. In light of our overwhelming dependence on sound, efficient and responsive procurement operations, we are thus vitally concerned with the provisions of S. 1001 which would substantially change these relative roles. NASA can be severely impacted and impaired if regulatory control over such a critical function is placed in the hands of an external agency having no particular knowledge of NASA operations and no responsibility for the performance of our statutory mission. For these reasons we are concerned and have opposed certain provisions of S. 1001 as reported by the Committee on Governmental Affairs and have previously attempted to communicate these concerns to the committee.

To cloak a small enclave within OMB with independent authority to impose detailed, precise regulations over an operational area so vital to many executive agencies in the conduct of business is to invite a repetition of lessons of the past which lead to the revocation of precisely the same authority in 1979.

Sound, efficient management of executive branch operations dictates the contrary. I believe that the present authority of OFPP is both appropriate and adequate for successful continuation of its proper role and we fully support its reauthorization on this basis.

Mr. Chairman, my formal statement is concluded.

Chairman TOWER. Thank you, Mr. Beggs.

Dr. DeLauer, what is your personal opinion about the contributions which OFPP has made to the Government procurement process and about any problems that have been caused by OFPP?

Dr. DELAUER. Mr. Chairman, the contributions they have made in the policy area, as I mentioned before, and also in managing the Federal Acquisition Institute are worthy of note. They are best at examining policy for changes required in the future, and for being able to provide a forum for reviewing and helping to resolve differences in the regulations issued by the agencies.

Where OFPP has fallen down in the past has been when they have injected themselves into the day-to-day procurement operations of the executive agencies. That is exactly what Congress found in 1979.

OFPP is a small agency. It has qualified people from the policy standpoint, but cannot possibly take on the day-to-day permanent operation of the executive agencies including both agency policy formulation and implementation.

Let me give you a quick example of one issue that we have spent some time on during the last couple of years. The issue was the accounting treatment of deferred compensation in pension benefits that the defense industry charges our contracts. It went on for almost 3 years.

We had the DAR Council meet 15 times, the DAR Council is composed of 10 people. We had DAR Council subcommittees meet approximately 25 to 30 times. We had to take testimony and consult with industry, with NASA, with GSA and with GAO. This is one small issue which required a tremendous amount of time to develop a regulation.

This is one of the maybe 150 we are working on at one time. How can you put this amount of work in the hands of a small group? Since they do not have that capability at the present time, they have only two places to go:

One, they will either have to build up a bureaucracy to do it; or

Two, they will have to come to the agencies involved and we will have to supply the people.

You do not get the best product where you have such split responsibility; agencies providing the people and OFPP making the decisions.

When OFPP pays attention only to the things that they were created for, which is policy and policy determination and policy planning, and disputes arbitration, they do an outstanding job.

They have fallen down on the job when they interject themselves into day-to-day individual agency regulatory issues.

Chairman TOWER. Dr. DeLauer, in your personal view, do personnel at OFPP have any special expertise or background which exceeds that of the personnel at DOD?

Dr. DELAUER. I dont want to get into judging their professional qualifications, Mr. Chairman. The people who are currently in OFPP were hired to do the job that the OFPP has been required to do ever since 1979, which is to handle policy formulation.

The proposed legislation will change their mission, and all I can say is that they certainly don't have the depth necessary to accomplish the work implied in the bill. It is just obvious, since OFPP is such a small agency.

The leadership may be perfectly capable. Some of them actually came out of the DOD procurement process, so they certainly have an understanding of how DOD operates. It is more than just the leadership; you need the troops to do the job.

Chairman **Tower**. Dr. DeLauer, would granting OFPP regulatory authority deprive the Department of Defense of control of the tools it needs to perform its mission?

Dr. **DeLauer**. Absolutely; as the Secretary said in his letter, it would essentially separate the authority from the responsibility and dilute accountability.

The bill does not exempt the SECDEF from the responsibility for national security because of his statutory requirements, but it certainly can affect his accountability.

I submit to you, Mr. Chairman, that when we get letters from the Congress—and I get letters like this by the carload every day on procurement activities that are tied to our regulations—it is going to be a cinch if this legislation is enacted that I will write a letter back saying I didn't make that regulation, and we are just implementing the way it was written.

It makes my job as an acquisition executive very simple. I don't think you will be happy with the response, but that will be the consequence of this proposed legislation.

If you don't write the rules, how do you expect the fellow to be accountable for them?

Chairman **Tower**. I would like to ask all of you to respond to the following.

To your knowledge, has DOD, NASA and GSA worked effectively together without OFPP having regulatory authority?

Dr. **DeLauer**. Yes. We have been doing it for the last 4 years. I think we have done a pretty good job. As a matter of fact, this administration has properly instituted more acquisition reforms than any other administration in the last 20 years.

The argument that Senator Cohen is making is he feels he needs to provide regulatory authority to OFPP to achieve acquisition reforms. I submit we are making acquisition reforms, particularly in the Defense Department, where the Carlucci initiatives have instituted more acquisition reforms than have been instituted in the Defense Department for the last 20 years.

Senator **Cohen**. Under considerable pressure from Congress.

Dr. **DeLauer**. You are absolutely correct. We don't need any more pressure.

Chairman **Tower**. Mr. Wright, would you comment?

Mr. **Wright**. Mr. Chairman, I totally agree with what Dr. DeLauer has said.

In the last 4 years we have made more progress from an OFPP standpoint as well as OMB standpoint on this entire area of reform than we had, I think, in the prior 5 years where we had regulatory authority.

I think the three primary procurement agencies as well as OMB are working very well in this area right now.

Mr. **Beggs**. Without any question, Mr. Chairman, we work very well together. The existence of the Federal acquisition regulations in final form was a monumental task. We worked very closely together with all the agencies concerned and I might add we worked quite closely with the OFPP through that process. It has worked well and I think the results will speak for themselves.

Chairman Tower. Mr. Wright, if the funding for OFPP is not reauthorized, would OMB nevertheless continue the Office?

Mr. Wright. Yes, Mr. Chairman, we would. We have authority under the organic act of 1974, updated under Public Law 96–83 in 1979, which permits continuation of the operation of OFPP. The continuing resolution, at this time, has funding for OFPP in it.

I would assume that any other extension beyond November 10 with OMB in terms of authorization or further continuing resolution would also have funding for it.

Chairman Tower. Thank you, gentlemen.

Senator Thurmond?

Senator Thurmond. Thank you, Mr. Chairman.

Mr. Beggs, in your statement you refer to the lessons learned from previous experience with the Office of Federal Procurement Policy having regulatory authority.

Would you explain for the committee what problems were experienced by NASA during that time?

Mr. Beggs. Yes, sir. This goes back first before my time, so I am speaking from the results of discussions of those problems, but they are generally of the type that Dr. DeLauer referred to. I might add for the record NASA is the third or fourth largest Federal procurement agency in Government, so we are a very substantial procurement activity.

When there are regulations changed, modified or imposed in total from the outside, the accountability and our ability to manage that procurement authority under the regulations is necessarily inhibited and in some cases destroyed because we must be accountable for the contracts we write.

If the contracts we write are such that we think completely through what kind of regulations, what kind of boilerplate, and what kind of other terms and conditions we put in, then they will be contracts we can live with, and I believe, that our contractors can live with. If the regulations are modified or controlled from outside the agency, it removes the accountability.

Senator Thurmond. In past testimony, Mr. Socolar states that the Department of Defense would support restoration of regulatory authority if certain conditions are met. I believe the following are conditions he laid down:

OFPP could use such authority only after DOD, GSA, and NASA certified that they are unable to reach agreement on a particular Government-wide procurement policy.

Proposed policy issuances by the OFPP Administrator would be submitted to the full Congress rather than just the Senate Committee on Government Affairs and House Committee on Government Operations; and the OMB Director and OFPP Administrator would be authorized to rescind or veto promulgation of agency regulations.

Would you comment on this, Dr. DeLauer?

Dr. DeLauer. Yes, sir.

Before I do that, I would like to follow up on the question that you asked Mr. Beggs about some of the problems that we had in the past.

As you know, at the present time there has been some concern about lobbying costs and advocacy costs. We are still working these issues from the procurement policy standpoint.

We were able in DOD, at the insistence of the Secretary, to promulgate a regulation that controlled these costs within DOD while the issue was still being resolved at a more general level across the Government.

So, that is an example of something we are permitted to do now which we may not be permitted to do if this legislation is passed.

When we had economic price adjustments during the high inflation period in the later seventies' we were directed at that time to withhold contractor payments that he was entitled to under the economic price adjustment clauses. They told us and we had to follow those orders.

They also insisted that we had to pay interest on certification of claims by the contractor which cost the Government money. They insisted we do that and it was an area we resisted very strongly because many times the claims submitted were without foundation. The fact they were getting interest on the money at the time was an additional cost.

We had a disagreement on what progress payments were to be made to the contractors. You might remember that that was one of the first things that this administration did when we came into office at the urging of the Congress to be sure that our progress payments supported the investment aspects of our contractors.

Those are the things that were causing us a tremendous number of problems in the past. I have a list of things that I would like to have in the record. Let me get them for you.

[Additional information follows:]

LESSONS LEARNED FROM PREVIOUS EXPERIENCE WITH OFPP

Opposition to multiyear procurement.

Opposition to increase in progress payments from 80 percent to 85 percent.

Opposition to acquiring personal services under contract.

Required agencies to write "wage busting" clauses for inclusion in contracts.

Required change in description of commercial items from "sold in substantial quantities" to "ever offered for sale" to the general public.

Senator THURMOND. Mr. Beggs, would you mind commenting on that for the record?

Mr. BEGGS. Yes, sir, I will be happy to.

[The information follows:]

Mr. BEGGS. In addition to the areas cited by Dr. DeLauer, NASA experienced problems in dealing with OFPP in the following areas:

Development of OFPP Policy Letter No. 78-2, Preventing "Wage Busting" for Professionals.—The procedures for evaluating contractor proposals for service contracts initially developed by the OFPP were not consistent with what significant experience had taught the Executive Branch agencies was necessary for the protection of professional employees and the achievement of mission objectives. To resolve this issue, we met with representatives of the Department of Defense and jointly with them arrived at a regulation that is compatible with recognized procurement procedures and otherwise workable.

OFPP Policy Letter No. 79-4, Contracting for Motion Picture Productions and Videotape Productions.—OFPP established a single system for the contracting of audiovisual productions. Elements of that system included qualified producers lists and selection procedures. In GAO case B-198360, the Comptroller General concluded that the OFPP procedures, among other things, were unduly restrictive of competition. Subsequently, OFPP modified the procedures to comport with the GAO conclusion.

OFPP Policy Letter No. 80-7, Policies for Establishing the Profit or Fee Prenegotiation Objective.—Our area of contention with OFPP in this matter is the issue of the allowability of Cost Accounting Standard [CAS] 414, Cost of Capital for Facilities in Use, under Cost No-Fee and Cost Sharing contracts. In the Policy Letter, OFPP issued a cost principle that was to be used Government-wide which made cost of money (cost of capital for facilities in use) an allowable cost on all cost reimbursement contracts except the two types cited above. The OFPP determination of "nonallowability" based on contract type has no foundation in precedent nor does it follow generally accepted accounting procedures. This decision on the part of OFPP to include this provision was made in order to accommodate the needs of one agency; however, this decision was to the detriment of NASA and other agencies in that it causes problems in the award and administration of the aforementioned types of contracts.

Implementation of the Public Law 95-563, the Contract Disputes Act [CDA] of 1978.—The CDA clearly states that nothing in the Act should be construed as precluding an agency from requiring a contractor to continue performance pending resolution of any claim arising under or related to the contract. In the implementation of the CDA, OFPP usurped the agencies' authority by prescribing limited conditions under which agencies could invoke the obligation to continue performance. NASA, under the Act and in accordance with the National Aeronautics and Space Act, 42 U.S.C. 2451, et seq., issued regulatory coverage which added a third condition, i.e., critical/major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable. This was done only after consultations with OFPP to have them amend their guidance to recognize the authority conferred to the agencies under the CDA failed. Failure on our part to so act could have serious implications and ramifications with regard to the successful completion of the programs entrusted to NASA.

Senator THURMOND. There has been a great deal of publicity recently about procurement practices, Mr. Beggs and Dr. DeLauer, would you each comment on the various ongoing programs in your areas that deal with improving procurement practices. Would you also do that for the record?

Dr. DELAUER. Absolutely.

Mr. BEGGS. Yes, sir.

[The information follows:]

Mr. BEGGS. One of the most important attributes of NASA has always been an ability to look at how we do our business, to objectively evaluate both our successes and our failures, and then apply the lessons learned in a way to improve our future performance. These studies cover the full range of agency operations: program management; budgeting, including personnel resources; and procurement. The studies are mostly of an "ad hoc" nature, which include the evaluation of a single functional element of the agency's operation or one that covers a broad spectrum of the agency's operations and procedures. A representative listing of the studies undertaken to improve the procurement function independently or where it was an integral element of broader processes include:

NASA Project Management Study.
Contract Leadtime Report.
NASA Acquisition Leadtime Study.

In addition to these "ad hoc" type studies, NASA has a number of ongoing programs/processes that deal with the strengthening of our procurement practices. The programs/procedures include:

Master Buy Plan Procedure.—NASA has a unique system for selecting contracts and procurement documents for Headquarters review and approval. Known as the Master Buy Plan procedure, its purpose is to provide the visibility and control needed to perform essential Headquarters management functions without causing unnecessary delays in the acquisition process itself. Once a year, each NASA field installation must submit a Master Buy Plan listing all procurements over $5.0 million expected to be initiated during the next fiscal year. These listings are then screened by Headquarters personnel, both procurement and program, to determine what procurement documents or actions will require Headquarters review and approval. There are five key documents or procurement actions considered under the Master Buy Plan procedure and Headquarters selection may entail the review of one or all five documents. In this manner Headquarters may focus its attention early in the process on those specific issues and transactions deemed critical and important to Headquarters management on a contract by contract basis. The Master Buy Plan procedure has attracted Government-wide notice and interest.

Management Reviews.—We have an ongoing procurement management survey program which assesses the effectiveness of procurement operations at each of our centers on a biennial basis. We have found this survey program to be an effective method for initiating improvements at the centers, for exchanging different approaches on procurement issues, and as a means of communication between the centers and Headquarters. In addition, we have a system of internal controls in accordance with the Federal Managers Financial Integrity Act and there are also ongoing audits by the Office of Inspector General as management oversight tools to ensure the continuing effectiveness of the procurement function.

Procurement Management Technology Program.—NASA has initiated a major effort known as the Procurement Management Technology Program (PMTP). The purpose of this program is to design, develop, and implement an integrated Agency-wide uniform automated procurement system. The competitive procurement for the system definition of this program was awarded in August 1982. Full implementation of the program is scheduled for Fiscal Year 1987. PMTP will improve our ability to make sound procurement decisions based on more accurate and timely procurement information.

Productivity Improvement.—As part of NASA's Productivity Improvement Program, the Office of Procurement is actively participating in a number of productivity and quality enhancement projects. For example, the Agency has made a commitment to establish NASA Employee Teams (NETS), which will be similar to quality circles. These teams will emphasize participative management concepts in improving both procurement productivity and quality.

PROCUREMENT REFORM

Dr. DeLauer. DOD initiated the Carlucci initiatives which originally contained 32 acquisition improvement areas. Today, that program is known as the Acquisition Improvement Program and those 32 initiatives have been consolidated into six which are receiving the personal attention of the Deputy Secretary of Defense. The six initiatives are: (1) program stability, (2) multiyear procurement, (3) economic (stable) production rates, (4) realistic budgeting, (5) improved readiness and support, and (6) encouraging competition.

Secretary Weinberger has issued a ten point program on July 25, 1983, to reform spare parts procurement, and on August 29, 1983, he issued a directive with specific milestones to modify the entire spare parts acquisition process.

DOD is also very much involved in the procurement reforms envisioned by Executive Order 12352 and has provided flag officers or executive service personnel to chair four of the six implementing task groups. The six task groups are: (1) Procurement Executive, (2) Lines of Contracting Authority and Accountability, (3) Improving Government Procurement System Performance, (4) Reducing Administration Costs and Burdens, (5) Simplifying Small Purchase, and (6) Career Management. See appendix B, p. 131, for copies of our second year status report on the Acquisition Improvement Program, the July 25, 1983, SecDef memorandum on Spare Parts Procurement, the August 29, 1983, SecDef memorandum on Spare Parts Acquisition, and the fifth progress report to the President on the implementation of Executive Order 12352, "Federal Procurement Reforms."

Senator Thurmond. Thank you, Mr. Chairman.

Chairman Tower. Mr. Beggs, are you aware of any specific instances in which OFPP has helped NASA do its job better?

Mr. Beggs. Yes, sir. In a number of cases we work very closely with them, both in looking at new legislation and the policy area on acquisition policy. They have been very useful in an arbitration role. That is, when we do have disagreements or we do have problems in resolving differences between ourselves and other agencies, OFPP can be extremely useful in bringing parties together and serving as an arbitrator as a means of getting an issue resolved. I think that is one of their most useful functions. They also have been useful in presenting and supporting the executive branch policy, both to the Congress and to the industry. I think that is an important role for them to play and they have been very helpful in that.

As I say, we support the continuance of the Office because I think it is a useful means in resolving problems and in making sure that the policies that we have are properly presented to the outside world. But as a regulator, no, sir.

Chairman TOWER. I want to apologize to Senator Evans. Thinking Senator Evans had left the room, I questioned out of turn.

Senator Evans?

Senator EVANS. Thank you, Mr. Chairman. I appreciate the opportunity.

I, of course, do not have a long history of the progress of the legislation which is the subject of this hearing nor even of the organization with which we are concerned.

I do, however, have a long history and close association with the distinguished Senator I replaced. Scoop Jackson was a strong believer in our national defense system and our space agency. He also was a prudent man and a strong believer in the initiation of this office.

I guess the real concern is the question of regulation. No one seems to be opposed to the continuation of the Office and I am hearing considerable testimony this morning about the help this Office has provided.

I guess I am unique in one respect among the Senators of the United States, I am the only one currently engaged in a campaign.

The campaign has me intensely involved with the people and their concerns, and I might say they are currently concerned about recent stories and recent activities which deal directly with the question of procurement for the Department of Defense. And while the examples may be ones which are minuscule in their dollar concerns, they are of a type which people can understand.

We have a long way to go in some of our procurement policies unless we can better show people that we are getting our money's worth for what we are spending on defense. I guess we can say with accuracy that we are borrowing virtually all, or at least a good share of the money we are spending on procurement. We are running at a $200 billion deficit, and that money is borrowed money.

Any industry that is reaching out to make an investment and borrow money has to have a special concern about the way the Federal Government is borrowing money.

I do have a couple of questions for the panel starting with the statement of Dr. DeLauer.

You say that S. 1001 contains a definition of procurement which could be interpreted to include the requirements determination process and the statement of Mr. Socolar which says the current bill recognizes this in prohibiting the OFPP from becoming involved in the agency determinations of need or individual procurement action.

Can you tell me why you think it could be interpreted that way and why you think it is clear the other way?

Dr. **DeLauer**. I think those two statements are not inconsistent because when you look at it from an overall Federal policy standpoint, the agency, OFPP, would not enter into the needs of the service. But when you get to the implementation of a particular regulation, they could very well get into the requirements issue, and if granted regulatory authority, they very well may.

Let me remind you of what we have been doing lately in line with the point that you just made, the point of the people's concern about some of the "horror" stories that have recently surfaced.

Let us take the spare parts issue. We are in the process of changing regulations and setting up a requirement for competition in the spare parts area that under this legislation would fall under the responsibility of OFPP. This is a big job.

There are a lot of people involved in changing these regulations, how we are going to have breakout, how we are changing our regulations to increase competition, and how it is going to be implemented down through the services. It is a problem that, as you say, demands immediate attention.

To push this thing through a system including review and approval by OFPP, would mean we would never get to the end of the road in a timely fashion.

My example of the advocacy regulation is a case in point. There are many people involved in that. So many different members of the committees of Congress who have an opinion. In our case, with a limited number of oversight committees we were very quickly able to issue a regulation on the whole question of lobbying and lobbying cost, and it is out and we are implementing it.

The general one for the full Government is not out yet.

Senator **Evans**. Did the initiation of the effort on spare parts, a change or modification of that effort, come about primarily because of the public stories which appeared?

Dr. **DeLauer**. It is a combination of things including the public stories. No question that provides notoriety to it.

As our Secretary has stated, the initiative came from within the Department by the Air Force at San Antonio and Oklahoma. The Air Force uncovered some mismanagement of spares acquisition, and started the initiative well before the publicity hit the street.

Senator **Evans**. There seems to be a concern that if you don't make the regulations, you can't operate well under the regulations. I guess this makes me question further. It sounds to me like the players on a football field who must make up the rules, otherwise they can't operate under the rules.

It seems to me they do pretty well working under the rules as long as they know what the rules are.

Is it really necessary, in your view, that you make up the regulations in order to carry out your function?

Dr. **DeLauer**. Absolutely, no question in my mind, and the Secretary's, too.

You make up the rules for spending your resources depending upon what responsibilities are given to you. We have the statutory responsibility, the Secretary does, of providing an adequate defense.

To answer the question you asked previously on the bill, the term "procurement," does get into the requirements issue. The term "procurement" in S. 1001 includes all stages of the process of acquiring property or services beginning with the need for such property or services, described by the executive agency and ending with contract completion and closeout.

Cradle to grave in the acquisition process is what the term "procurement" means in this proposed legislation.

Senator **Evans**. Do you have any proposed specific language which could clear up that particular problem so it would be interpreted to clearly exclude that portion from the description?

Dr. **DeLauer**. I guess you can always say there are ways to wordsmith some of these statutes. We are firm in our recommendation to you, sir. We just do not want OFPP to have regulatory authority.

They ought to do what they are good at, which is setting policy, arbitrating and planning ahead for the future. That is a full-time job.

Senator **Evans**. I understand that; it has been made very clear.

Mr. **Beggs**. May I add to what Dr. DeLauer said?

As a businessman, which I am, I can't conceive of running a business which requires that you have an outside agency telling you what terms, conditions, and regulations you have to use in writing your contracts.

It is the businessman, it is the manager who knows what he is doing, what he is trying to do, and the way he is trying to buy it who is the most competent to write the contract that he is using to buy it and the regulations surrounding it.

You can't run a business by having an independent group tell you how to operate. That, in essence, is what you would have if an outside agency were imposing regulations on any of our procurement activities.

Senator **Cohen**. Senator Evans, if you would yield, it is interesting to point out if there is any question about the definition of "procurement" in the legislation, as described in subsection (2), section 3, this definition was changed at the recommendation of DOD to accommodate their concerns.

Now, to raise that issue seems to me to be somewhat inconsistent.

Senator **Evans**. I have no further questions, Mr. Chairman.

Chairman **Tower**. Senator Cohen?

Senator **Cohen**. Mr. Wright, when you testified before the Governmental Affairs Committee, you said that OFPP's present authority should be extended to give the Administrator leadership and directive authority in matters of Government-wide procurement policy; and then you said you did not seek regulatory authority because you thought it could function effectively without it.

I then asked you how OFPP could exercise leadership and directive authority effectively without regulatory authority.

Your response was: "A good question, Mr. Chairman."

I think it still remains a good question at this point, because it has not been resolved and will not be resolved without the restoration of OFPP's regulatory authority.

According to the General Accounting Office, which has monitored OFPP's authority activity since 1974, and I am quoting:

> There have been no instances when the use of OFPP regulatory authority has injured our defense posture, and there is nothing on the horizon which would indicate the conditions will change.

Do you know of any instances when OFPP used its regulatory authority between 1974 and 1979 to the detriment of our national defense?

Mr. **Wright.** Senator Cohen, first of all, I wasn't there then. I have not asked that question of OFPP.

My guess is if I did ask the question of OFPP, I probably would not get an answer that would be as accurate as Defense's would be in that particular area.

Senator **Cohen.** Nothing has been brought to your attention to indicate that OFPP functioned in any way to the detriment of our national security?

Mr. **Wright.** Senator, I never asked that question because, to be honest with you, I did not particularly care what they did between 1974 and 1979.

My main concern was the fact we had very specific instructions from the Congress in terms of the amendment of the organic act of 1979 and that we did put out our Executive Order 12352 which, as far as I am concerned, gave us all the responsibility as well as the authority within the executive branch to carry out the mandates of Congress under that organic act.

I think we have fulfilled it pretty well. So, I can't answer your question because I have never asked it. I will be more than happy to go back and see what OFPP would come up with.

Senator **Cohen.** According to GAO, OFPP's previous regulatory authority was instrumental in getting the FAR project off the ground.

Given the initial agency opposition to the FAR concept, do you think we would have a uniform procurement regulation today if OFPP did not have that regulatory authority?

Mr. **Wright.** Yes, I believe that we probably would have, although at that time, and again, I am going back on memory in terms of what some of my people have said, it was fairly specific as to what had to be delivered under the regulatory authority.

It has also been fairly specific as to what is supposed to be delivered to the Congress without the regulatory authority and the uniform Federal procurement system was delivered on time and on schedule without it.

The Executive order was put out without the regulatory authority. The FAR system will come out, I think, reasonably on schedule.

Senator **Cohen.** Were there any last minute objections to the FAR system voiced to you by any department?

Mr. **Wright.** There was no objection to the FAR system per se. There was a concern about the pace at which we were moving, and whether or not we would be able to train the procurement specialists quickly enough in a fairly substantial revision and reform of the procurement policies.

Senator **Cohen.** There was no opposition to the system concept embraced in FAR?

Mr. **Wright.** It was not expressed to me.

There was a session that we did have, and the only reason I am bringing this up is just to show how we can operate in which the three primary agencies, DOD, NASA, and GSA, did come in and ask for more time and we did not allow it.

We will maintain the schedule for implementation on April 1, 1984.

Senator COHEN. What authority did OMB use to implement the FAR?

Mr. WRIGHT. The Executive order. That was the Executive Order 12352 that came out in March 1982.

Senator COHEN. Didn't OMB use the authority of the Office of Information and Regulatory Affairs to implement the FAR?

Mr. WRIGHT. I believe that is legislative authority we made use of.

Senator COHEN. What did you use to implement it?

Mr. WRIGHT. You are right; the legislative authority was that of the Office of Information and Regulatory Affairs.

Senator COHEN. Dr. DeLauer, we received a number of letters in support of the reauthorization of OFPP. I want to read one to you, which I would like to submit for the record.

> OFPP's past performance and its importance to the future, it is our belief that OFPP served a singularly important role in the procurement process of the U.S. government, presenting, as it does, a single face in the Executive Branch.
>
> With respect to procurement policies of the government, in relation to the private sector, the OFPP provides a much needed function. Our experience has been that OFPP operates with a commendable lack of bias, its staff has unusually capable and well qualified experts in all the many fields in which I was called upon to be involved.
>
> Despite a small force, the effectiveness of its work is all the more impressive. In our view, the performance of OFPP since its creation in 1974 is more than adequate justification for reenactment of authority legislation.
>
> In addition, the work yet to be done by OFPP is of such importance that dissolution at this time would be a major blow to both the Administration, the Federal contract system and long-term reform of that system.
>
> The present major effort to develop a new single set of contract regulations for all government agencies in compliance with the recommendation of the Commission on Government Procurement, the federal acquisition regulation system is a most significant case in point.
>
> The only chartered Executive Branch agency in position to interface with all government agencies in a completely unbiased manner, it is our position that OFPP has more than adequately demonstrated the effectiveness since creation and has furnished irrefutable justification for its continuance in the future.

Dr. DELAUER. I could have signed it.

Senator COHEN. This is a letter you sent to Senator Chiles, dated February 23, 1979.

[The letter follows:]

TRW

EXECUTIVE OFFICES

February 23, 1979

The Honorable Lawton Chiles
Chairman, Subcommittee on
Federal Spending Practices
United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

In response to your letter of February 2, regarding your subcommittee's forthcoming review of the Office of Federal Procurement Policy (OFPP), I would like to submit for the record a statement of positive endorsement of the OFPP, its past performance, and its importance in the future, on behalf of TRW Inc.

It is our belief that the OFPP serves a singularly important role in the procurement process of the United States Government. Presenting, as it does, a "single face" in the Executive Branch with respect to the procurement policies of the Government in relation to the private sector, the OFPP provides a much-needed function. Our experience has been that the OFPP operates with a commendable lack of bias, and that it is staffed with unusually capable and well-qualified experts in all of the many fields in which it is called upon to be involved. With the surprisingly small staff it possesses, the effectiveness of its work is all the more impressive.

In our view, the performance and positive accomplishments of the OFPP since its creation in 1974 are more than adequate justification for the enactment of reauthorization legislation. In addition, the work yet to be done by the OFPP is of such importance that its dissolution at this time would be a major blow to both the administration of the Federal contract system and to the long-term reform of that system. The present major effort to develop a new, single set of contracting regulations for all Government agencies in compliance with a recommendation of the Commission on Government Procurement—the Federal Acquisition Regulation System—is a most signficant case in point.

As the only chartered Executive Branch agency in a position to interface with all Government agencies and with industry in a completely unbiased manner, it is our position that the Office of Federal Procurement Policy has more than adequately demonstrated its effectiveness since its creation, and has furnished irrefutable justification for its continuation in the future.

Very truly yours,

Richard D. DeLauer
Executive Vice President

SYSTEMS AND ENERGY · TRW INC. · ONE SPACE PARK · REDONDO BEACH, CALIFORNIA 90278

Dr. DeLauer. That is right.

Senator Cohen. When you were executive vice president of TRW.

Dr. DeLauer. That is right.

Senator Cohen. At that particular time, OFPP had regulatory authority. I found nothing in your letter and nothing in the 1979 hearing record in which you ever criticized the existence of regulatory authority in OFPP. Not one single word focused on regulatory authority.

Dr. DeLauer. I notice it was not explicitly mentioned either.

Senator Cohen. You wrote the letter. You were the one endorsing the legislation. The Senate had agreed to the creation of regulatory authority.

Dr. DeLauer. You read my testimony?

Senator Cohen. I read it.

Dr. DeLauer. I will tell you the job that we felt was necessary and which that letter was based on was the fact that there were inconsistencies in Department regulations in regard to how to handle indirect cost, how to handle IR&D [Independent Research and Development] and B&P [bid and proposal] and how to handle certain other costs.

Stu Evans and I sat, maybe in this very room, and brought these points up. At that time, the regulatory authority was going to be removed because Congress itself——

Senator Cohen. You sent this letter to Senator Chiles. There was no effort in the Senate to delete regulatory authority.

Dr. DeLauer. It was in the House.

Senator Cohen. Why didn't you raise the issue at that time?

Dr. DeLauer. Because that was not an issue at that time.

Senator Cohen. Your letter is the greatest ringing endorsement of the OFPP, with regulatory authority, I have ever seen.

Dr. DeLauer. Senator, I provided this morning, a ringing endorsement of the role, the way it should be, as a consequence of that 1979 hearing.

You and I have just one disagreement and that is the regulatory authority.

Senator Cohen. I want to know what it is that is so threatening to the Department of Defense. Every time we start talking about increasing competition in contracting and reforming procurement policies, DOD comes rushing up here waving the flag claiming that we are trying to undermine national security.

Dr. DeLauer. Competition in contracting; I have never waved the flag. You know that is not true.

Senator Cohen. You have not, but others in DOD have.

Dr. DeLauer. I am the acquisition executive.

Senator Cohen. Mr. Thayer is opposed to even having OFPP as a statutory creation. He has so indicated. I have his letter which I will put in the record. He did not want an OFPP, period.

[The letter of Mr. Thayer follows:]

THE DEPARTMENT OF DEFENSE,
Washington, D.C., February 7, 1983.

Hon. EDWIN MEESE III,
Counsellor to the President,
The White House,
Washington, D.C.

DEAR MR. MEESE: As you know, DOD recently commented on a legislative proposal written by OMB to enhance the role of their Office of Federal Procurement Policy and to continue its existence for an additional period of time.

Certain aspects of this proposal just do not seem to be in line with how I believe government agencies should be organized or operated. First of all, I do not believe that the Executive Branch should propose the continuation of a legislative authorization of this function when this can be accomplished by the executive authority of the President. Second, the proposed legislation requires the Office of Federal Procurement Policy to report policy matters directly to the Government Operations Committees of Congress. I do not believe that we should support this direct reporting requirement.

I am not suggesting that an organization such as the Office of Federal Procurement Policy is not required, just that it should owe its existence and report to the President rather than the Government Operations Committees of Congress.

I agree that a central office should exist within the government to provide broad policy guidance on procurement matters. However, I am also aware that it is almost impossible to draw a distinct line between the role of such an office and the roles of agencies with contracting responsibility, and that, as a result, disagreements will occur from time to time. These should be resolved within the Executive Branch. When the office is a creation of the Congress, there could be a tendency for congressional committees to weigh in on these matters.

These issues are of great concern to me and I feel that you should consider not submitting this legislation.

Sincerely,

PAUL THAYER.

Dr. DELAUER. Boy, that is news to me. I have to see that letter because he and I have talked about this and that is not the case.

Senator COHEN. I will be happy to read to you where Mr. Thayer stated he doesn't want legislation whatsoever, that we in Congress are too intrusive. Congress tends to weigh in on issues affecting Federal procurement policy. I have never heard anything so threatening in all my life. Let me read it to you. I will quote from the letter.

> I do not believe we support a direct reporting agreement. I agree a central office should exist in the Government to provide broad policy guidelines in procurement matters.
>
> However, this should be resolved in the executive branch office. There could be a tendency for congressional committees to weigh in on these matters.

What is wrong with Congress weighing in on these matters when procurement involves billions of dollars?

Dr. DELAUER. I have no problem with that if we have a reasonable amount of oversight. My concern is that you are diluting the oversight.

Senator COHEN. How are we diluting the oversight?

Dr. DELAUER. In this particular legislation. We have two more committees which we have to come to with regulations. We have to go to the Government Operations Committee.

Senator COHEN. You always had oversight.

Dr. DELAUER. Not on our regulations. We did not have to come for approval.

We have to come and submit to you and the Governmental Affairs Committee in the Senate and Mr. Brooks' Committee on Government Operations 30 days before we even submit it.

Senator **Cohen**. Should we put in a notice requirement?

Dr. **DeLauer**. I would like to delete the whole regulatory part. I am clear on that.

Senator **Cohen**. I wish you could have expressed that in your letter because it seems to me we had a number of industries writing to us favoring the reauthorization of OFPP with regulatory authority.

I find it incredible when you look at the leeway and the flexibility under section 1.4 of the FAR. Section 1.4 states:

> Deviation from the FAR may be granted when necessary to meet specific goals and requirements of each agency.

How in the world are we going to be impinging on the national security when you have the flexibility, as NASA and any of the other agencies have the flexibility, to say we have a national security requirement and we can waive that? What is the major problem?

Dr. **DeLauer**. Let me give you a little history of things that led up to the problem in 1979.

You asked Mr. Wright if he thought he could comment on whether any of the activity of the OFPP impinged on national security, and you quoted the GAO as saying that they couldn't find it.

They are probably right from an explicit standpoint. From an implicit standpoint, if it costs more money to buy the products that we need, and indeed, since there is a limited amount of resources available, regulations, which increase cost could impinge on national security.

During the late seventies, the OFPP was managed and regulations were promulgated in what I would call the social service areas, we were required to do certain things in the disadvantaged areas by regulation, not by legislation, and that cost us money. It cost us time and that was forced upon us.

It was a public advocacy leadership in OFPP at that particular time. Such is not the case now and it was not originally the case. In the middle, believe me, the leadership of OFPP put many restrictions on us in the way we handled some of the social legislation activities in our procurement regulations.

Let me tell you that impacted on our activities and it must have impacted indirectly on national security.

Senator **Cohen**. I will follow that up with some testimony from the 1979 hearings which show that DOD was actually the one who pushed OFPP in that direction.

Nonetheless, to come back to the point you raised, you said you have two more committees to report to. Under this bill, only OFPP's regulations have to come to Congress. DOD's regulations do not come before the Congress.

So, your apprehension about more committees to report to is not accurate. OFPP's only authority to issue regulations comes when there is need to reconcile differences among, or initiate action by NASA, DOD, and GSA.

[The prepared statement of Mr. Dale W. Church before the Committee on Governmental Affairs, March 2 and 9, 1979, appears as appendix C, p. 203.]

Dr. **DeLauer.** That is not true. They can do that now.

Senator **Cohen.** They can do what now?

Dr. **DeLauer.** They can reconcile the differences.

Senator **Cohen.** With binding authority?

Dr. **DeLauer.** Sure. Right out of OMB's Executive order.

Senator **Cohen.** Does OMB have binding authority?

Dr. **DeLauer.** Yes.

Senator **Cohen.** In May, OFPP issued a policy directive which requires public notice of proposed procurement regulations.

[The information follows:]

[Vol. 39, p. 1068, Federal Contracts Report—May 30, 1983]

[Procurement Regulations]

OFPP Issues New Policy on Public Notice for Proposed Procurement Regulations

The Office of Federal Procurement Policy has issued new guidance for federal agencies to follow in publicizing proposed procurement policies and regulations.

OFPP Policy Letter 83-2, issued May 25 by OFPP Administrator Donald Sowle, requires agencies to publish in the *Federal Register* notice of all "significant" proposed procurement policies and regulations, and to allow interested parties 30-60 days in which to submit comments on the proposal. A proposal is considered significant if it has an effect beyond the agencie's internal operating procedures, or a cost or administrative impact on contractors.

In cases where an agency plans to adopt a policy or regulation on which another agency has already sought comment, the proposal need not be published again for comment, under the OFPP guidance.

When circumstances make solicitation impracticable, the solicitation period may be waived by an agency head or designated officials. However, the policy or regulation issued must be temporary, and may not be issued in final form until comments have been obtained.

In publishing the notice, agencies must include a description and text of the proposal. (At the agency's discretion, a summary of the proposal may be published, along with information on the availability of the full text.)

Agencies are encouraged to maintain lists of parties with a continuing interest in the subject matter of their regulations, and to solicit their comments directly in addition to any notice published in the *Federal Register*.

The OFPP guidance is intended to fill a gap in the Administrative Procedure Act. The APA establishes public notice and comment for federal rulemaking, but exempts procurement, grants or loans from the notice and comment requirements.

The OFPP guidance does not require agencies to publish an analysis of the comments received on a proposed policy or regulation, or to publish the final version of the policy or regulation.

The OFPP guidance also establishes procedures for public hearings or meetings regarding proposed OFPP policies. The procedures state that, normally, only one representative of an organization may make an oral presentation, and organizations with joint interests may be requested to appear as a panel with a single speaker. Announcement of such hearings or meetings will be published in the *Federal Register* and the *Commerce Business Daily*.

Currently, agency practices on publishing notice of proposed rulemaking regarding procurement vary. Some, like the Defense Department, do not announce proposed changes to the Defense Acquisition Regulation in the *Federal Register*, but instead rely on mailing lists to solicit the views of the defense industry.

Asked what sort of impact the OFPP policy letter would have on the DAR Council's future practices, one DOD official commented, "None. They [OFPP] don't have regulatory authority." The comment was a reference to the fact that OFPP lacks statutory authority to issue regulations that are binding on all federal agencies. Legislation is pending in Congress that would give OFPP that authority.

The OFPP policy letter is scheduled to appear in the *Federal Register* this week. It will take effect 90 days thereafter.

Text of OFPP Policy Letter 83-2 follows:

OFPP Policy Letter No. 83-2

To the Heads of Executive Departments and Establishments

Subject: Publicizing the Development of Procurement Policies and Regulations

1. *Purpose.* The purpose of this Policy Letter is to establish uniform criteria and procedures for soliciting the views of all interested parties in the development of procurement policies, regulations, procedures and forms by the executive agencies.

2. *Authority.* This Policy Letter is issued pursuant to Section 6(d)(3) and Section 14(b) of the Office of Federal Procurement Policy Act, Public Law 93-400, as amended by Public Law 96-83 (41 U.S.C. 405(d)(3), 412(b)).

3. *Policy.* The views of all interested parties, including Government agencies, private organizations and associations, business firms, educational institutions and individuals are to be solicited and considered by any executive agency proposing to develop or amend a procurement policy, regulation, procedure, or form.

4. *Criteria.* The policy applies to all significant proposed procurement policies, regulations, procedures and forms. A proposal is generally considered to be significant if it has an effect beyond the internal operating procedures of the issuing agency, or a cost or administrative impact on contractors.

5. *Waiver.* The solicitation of views may be waived, by the heads of executive agencies or their designees, when circumstances make such solicitation impracticable, such as an emergency or a requirement to implement a new statute in a relatively short time. In such circumstances, the policy, regulation, procedure, or form shall be identified as temporary, and shall not be issued in final form until the views of all interested parties have been solicited and considered; views shall be solicited not later than 30 days after the date of temporary issuance.

6. *Procedures.* Notice of all significant proposed procurement policies, regulations, procedures, and forms shall be published in the *Federal Register* for public comment. Views of agencies directly affected shall be solicited by letter. The normal comment period shall be 60 days, but in no case less than 30 days. Matters which have been through a public comment period by one agency, including the Office of Federal Procurement Policy, and are being adopted or implemented essentially without change by another agency, need not be published again for comment.

7. *Content of Notice.* The *Federal Register* notices shall include the following:

   a. A description of the proposal, the background and reasons for the proposal, and its intended effect, in the format required by Title 1, Code of Federal Regulations, Part 18.12.

   b. The text of the proposal. However, if it is impracticable to publish the full text in the *Federal Register*, a summary shall be published, and the notice shall advise where the full text may be obtained or examined.

8. *Mailing Lists.* Agencies are encouraged to maintain lists of all interested parties that have expressed a continuing desire to be informed of proposed procurement policies, regulations, procedures, and forms, and to solicit their comments directly in addition to any notice published in the *Federal Register*.

9. *Public Hearings or Meetings of the Office of Federal Procurement Policy.* Hearings or formal meetings may be held by OFPP to provide an opportunity for discussion of OFPP policies under consideration. Such hearings and meetings shall be open to the public, and notice shall normally be published in the *Federal Register* and the *Commerce Business Daily* at least 30 days in advance. Anyone may make a brief oral presentation, provided a written statement is submitted to OFPP by the day preceding the hearing or meeting. Normally, only one representative of any organization may make an oral presentation, and organizations having joint interests and views may be requested to appear as a panel with only one speaker. The Administrator may require that presentations be limited to summarizing the main points of written submissions. If time permits, others in attendance may be allowed to comment briefly on matters under discussion.

10. *Effective Date.* This Policy Letter is effective (Insert date 90 days after publication in the *Federal Register*).

11. *Sunset Review Date.* September 30, 1986.

12. *Concurrence.* This Policy Letter has the concurrence of the Director of the Office of Management and Budget.

DONALD E. SOWLE,
Administrator.

Senator COHEN. According to the *Federal Contracts Report*, when a DOD official was asked what impact this policy directive would have on future practices, he said "none."

Is that the kind of attitude——

Dr. DELAUER. I hope you have not quoted me again. My answer is no. They have the authority through OMB. Through Joe and OMB they have all the authority in the world.

Senator COHEN. Do you consider OFPP's policy directives to be binding?

Dr. DELAUER. When OMB says so, yes.

Senator COHEN. You don't unless OMB says so?

Dr. DELAUER. They are supposed to work through OMB.

Senator COHEN. OFPP has to go through OMB in implementing FAR.

Mr. BEGGS. Senator Cohen, if I can respond, what is the problem?

I have been at executive levels in the Federal Government for 7 years and working these kinds of problems during that period. The rest of my life I have been on the other side of the table in business working with the Government. I really don't know where the problem is.

Senator COHEN. I don't know where the problem is either. Frankly, I am surprised at the opposition.

Mr. BEGGS. The problem you referred to in not being able to get the issues resolved, there has been plenty of authority. If muscle needs to be used, I have never noticed OMB lacking in muscle in putting these regulations in proper perspective.

Senator COHEN. Let me quote from Stuart Evans, Director of Procurement for NASA, who testified in 1979 in favor of the OFPP authorization. He stated:

> We believe projects undertaken by OFPP could not have been achieved effectively without leadership displayed together with the authority of the Office.
>
> OFPP has demonstrated commendable initiative in instituting projects to consolidate and replace existing procurement regulations with a single uniform regulation for all executive agencies as recommended by the procurement commission.

[The testimony of Mr. Stuart J. Evans before the Committee on Governmental Affairs, March 2 and 9, 1983 appears as appendix D, p. 211.]

Senator COHEN. What has changed since that time when Mr. Evans thought the OFPP was doing such an outstanding job with regulatory authority?

Why is NASA suddenly saying we don't need that?

Mr. BEGGS. You will have to ask Mr. Evans who is sitting behind me, but my view is this:

That we have had experience with OFPP with regulatory authority and we feel that was bad. We have had experience with OFPP without regulatory authority and we think that experience has been good. Therefore, comparing the two situations we much prefer the latter to the former. It is as simple as that.

Senator COHEN. In your prepared testimony, you indicated that OFPP was never intended to be a regulatory office, nor should it.

Let us review the history because the Commission on Government Procurement found that the proliferation of procurement regulations was the most persuasive problem affecting procurement; and they recommended in the 1972 report to Congress that the present regulations should be consolidated to establish a system of Government-wide, coordinated to the extent feasible, uniform procurement regulations under the direction of the Office of Federal Procurement Policy which will have the overall responsibility for development, coordination and control of procurement regulations.

In 1974, OFPP implemented the Commission's recommendation and gave the Administrator the authority to issue regulations.

The Commission intended to give OFPP regulatory authority from the beginning.

Mr. BEGGS. All right, I concede the point, but I will not concede the issue because I think the issue is important.

Dr. DELAUER. Senator Cohen——

Senator COHEN. Dr. DeLauer, I am not going to listen to you because the second bell has rung and I have to vote.

Dr. DELAUER. You will never listen to me on the subject. It is only because Senator Tower made you come here and talk about it. I asked to come over and talk to you about it.

Senator COHEN. I will be right back.

Dr. DELAUER. I will wait.

Chairman TOWER. Before Senator Cohen goes, I want to make note of one thing. Senator Cohen indicated the regulatory authority was carefully limited to certain circumscribed situations.

The language of the bill on page 6, line 4, seems to be specific:

> The Administrator may prescribe Government-wide policies, regulations, procedures, and forms which shall be followed by the executive agencies.

I understand that Mr. David Baker, the Acting Associate Administrator of OFPP, is here. I would like Mr. Baker to come to the table, if he will, to respond to questions.

STATEMENT OF DAVID BAKER, ACTING ASSOCIATE ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY

Chairman TOWER. Mr. Baker, do you believe OFPP requires regulatory authority to promote uniformity in the Federal procurement rules?

Mr. BAKER. You are asking my personal view?

Chairman TOWER. Yes.

Mr. BAKER. I think that the Office, as has been suggested here already, has been rather successful in the last 2 or 3 years without regulatory authority.

However, I also believe such authority would be useful from time to time and would, in fact, facilitate some of our work.

Chairman TOWER. Do you think more authority is absolutely required?

Mr. BAKER. I do not believe it is absolutely required.

I believe it would be useful and would facilitate our work.

Chairman **Tower**. Thank you, Mr. Baker.

Gentlemen, there seems to be no more questions. I do appreciate your appearing here this morning.

If any of you have anything to add, we will be glad to hear from you.

Mr. Wright?

Mr. **Wright**. Mr. Chairman, I believe Mr. Baker gave his personal opinion, a professional opinion, which I appreciate.

From the administration's and the Office of Management and Budget's standpoint, as we have said before, we and this administration came in not to expand regulations, whether in the Federal Government or outside the Federal Government.

As Mr. Beggs said, OMB has never shown a tendency for shyness or lack of exercise of authority within the executive branch. So we feel that we do have the necessary regulatory authority through the Executive Office and Office of Information and Regulatory Affairs to be able to go ahead and carry out the responsibility within the Organic Act for Federal procurement reform.

Chairman **Tower**. You do work in the Office of the President and, therefore, if there is anything that concerns you, can you always resort to recommending to the President that he issue an Executive order on the subject?

Mr. **Wright**. Yes, sir. That is exactly right.

As Dr. DeLauer stated, if you ever have a problem to the point where you would have an agency or anybody within the Executive Office of the President that is violating an Executive order, very simply, Mr. Chairman, the President can come in and ask for a further discussion.

Chairman **Tower**. In other words, the OMB is, in fact, the management tool of the President?

Mr. **Wright**. That is right, Mr. Chairman. And we take that responsibility very seriously.

Chairman **Towers**. Dr. DeLauer?

Dr. **DeLauer**. This is in response to Senator Cohen's assertion that this bill would not prohibit the agency from promulgating their regulations.

This is not the interpretation we make of this bill, Mr. Chairman. While it is true that the regulations that are put out by OFPP will be referred to the operations committees, the agencies, the Department of Defense, for one, may not implement any regulations inconsistent therewith.

In other words, if our regulations are inconsistent with what they promulgate, we can't issue them. The OFPP can rescind any agency regulation they feel is inconsistent. Furthermore, the agencies must clear all their regulations on acquisition with OFPP which affect anyone outside the agency.

Therefore, regulations that cross over from DOD into some other area, must have clearance by OFPP under this regulation.

That is a prerogative we don't like to see.

Chairman **Tower**. Gentlemen, anything further?

Thank you very much.

Dr. **DeLauer**. Thank you, Mr. Chairman.

Chairman **Tower**. I would like to ask Mr. Socolar and Mr. Fettig to come to the table, please.

Dr. DeLauer, if you will remain.

Our second panel of witnesses is Mr. Milton Socolar of the General Accounting Office and Mr. Lester Fettig, the former Administrator of OFPP.

Gentlemen, the committee will receive any statements you wish to submit for the record and they will be included in their entirety.

If you choose, you may summarize those statements. In any case, you may proceed as you see fit.

I will first call on Mr. Socolar.

STATEMENT OF MILTON J. SOCOLAR, SPECIAL ASSISTANT TO THE COMPTROLLER GENERAL, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY BURT HALL, GROUP DIRECTOR, NSIAD, GENERAL ACCOUNTING OFFICE

Mr. Socolar. Thank you, Mr. Chairman.

I would like to introduce my colleague, Mr. Burt Hall, who is very familiar with the operation of OFPP.

I would like to insert my statement for the record and read some small portions and summarize the remainder.

We understand in connection with the issue of restoring regulatory authority to OFPP that the Department of Defense would not object if OFPP could use such authority only after DOD, GSA, and NASA certified that they are unable to reach agreement on a particular Government-wide procurement policy; if proposed policy issuances by the OFPP Administrator were submitted to the full Congress rather than just the Senate Committee on Governmental Affairs and House Committee on Government Operations; and if the OMB Director rather than the OFPP Administrator would be authorized to rescind or veto the promulgation of agency regulations.

Notifying the entire Congress rather than certain committees of major policy changes will bring greater visibility to OFPP's efforts and we find this change unobjectionable.

Authorizing the Director of OMB alone rather than the OFPP Administrator with concurrence of OMB to control agency regulations, as now provided in the bill, and requiring DOD, GSA, and NASA to certify that they have reached an impasse before allowing the OFPP Administrator to take action would, in our opinion, be counterproductive.

If OFPP is to have responsibility for making needed improvements in Federal procurement policies and practices, it must have the commensurate authority. Three situations we have encountered in our work illustrate the point well.

The first has been discussed at some length this morning and involves the evolution of the FAR.

A second illustration concerns a proposed policy on competition that has been debated for over a year and is now out for public comment.

OFPP's efforts to define and limit the conditions for contracting on a sole-source basis have been long opposed by DOD and some other agencies.

The policy letter has gotten as far as it has only because the President has become personally involved. It is doubtful that the agencies would have certified an impasse for resolution by OFPP.

The final example that I have in my statement is perhaps the most important from the standpoint of OFPP's future operations.

The Executive Order 12352 put OFPP in a leadership role with regard to administration of the Government-wide procurement reforms called for in the order. We found that most agencies consider themselves free to reject or unilaterally revise OFPP's policy guidance.

As a consequence, most agencies, including DOD, had not implemented the first in a series of important changes designed to improve the Federal procurement process.

This first change seeks to shift emphasis away from excessive reliance upon regulations toward managing the procurement system as a whole.

For example, it seeks to put someone in charge of:

First, professionalizing the work force.

Second, clarifying lines of authority.

Third, simplifying operations.

Fourth, increasing competition.

Lack of regulatory authority has undoubtedly hampered OFPP efforts toward achieving agency compliance. (See GAO/PLRD-83-88, dated June 17, 1983.)

Should Congress grant OFPP regulatory authority, it is important that its use be limited to oversight and conflict resolution.

The current bill recognizes this in prohibiting OFPP from becoming involved in agency determinations of need or in individual procurement actions, and OFPP is required to consult both with the agencies and the Congress before it releases any new policies.

The bill charges OFPP with "insuring the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements."

Finally, it is clear that agencies, including DOD, may issue regulations to meet their unique mission requirements.

Because OFPP has little more than a dozen professionals, it relies heavily on interagency task forces to help develop procurement, policies and we wouldn't see this as changing in any significant degree.

These task forces are frequently led by and staffed with experts from DOD. For example, much of the work on the FAR and the policy guidance developed under the President's recent Executive order was done with leadership and staffing provided by the three military services.

One final important point should be noted. At the time Congress removed OFPP's regulatory authority in 1979, so that OFPP could concentrate its full resources on developing a unified Federal procurement concept, it was intended that at completion of such task regulatory authority would be restored.

We at GAO understood that to be the case. It is our understanding that OMB had the same understanding at that time. We at GAO share the concerns of many in the procurement community that without restoration of regulatory authority to OFPP, much of the progress made to date will eventually dissipate.

Based on the comments that were made this morning, I would make the following summary:

It seems to me that all concerned feel that OMB, OFPP, and the agencies do work well together and that there certainly have been some significant accomplishments.

But as well as the agencies have worked with OFPP, it has not been without the exercise of a considerable amount of outside pressures, particularly from the Congress.

The main point I would like to make is that I don't think we are talking about providing OFPP with regulatory authority with any short-term consequences in mind.

It is my view that over the long term, if OFPP is going to have the kind of stature which an arm of the Government should have, if it is going to have an important role in the procurement process, and if OFPP is going to attract the kind of staff it will need to carry out that function, then it must have enough regulatory authority to enforce the kinds of decisions that it will be making when all efforts at conciliation and compromise have failed especially on important issues.

From the standpoint of how OFPP has operated in the past, I would not envision OFPP overstepping the use of that regulatory authority outside of the framework of the way it presently operates without the regulatory authority.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Socolar follows:]

PREPARED STATEMENT OF MILTON J. SOCOLAR, SPECIAL ASSISTANT TO THE COMPTROLLER GENERAL

Mr. Chairman and Members of the committee: In earlier testimony before the House Committee on Government Operations and in our recent report to the Senate Governmental Affairs Subcommittee on Oversight of Government Management, we supported increased authority for the Office of Federal Procurement Policy including the need to reinstate OFPP's regulatory authority which was temporarily removed in 1979. We understand that the purpose of this hearing is to consider the implications associated with restoration of OFPP's regulatory authority under Senate Bill S. 1001. The Department of Defense apparently is concerned that OFPP will direct procurement activities in a manner incompatible with national defense interests but would support restoring regulatory authority if:

> OFPP could use such authority only after DOD, GSA, and NASA certify that they are unable to reach agreement on a particular government-wide procurement policy;
>
> Proposed policy issuances by the OFPP Administrator would be submitted to the full Congress rather than just the Senate Committee on Governmental Affairs and House Committee on Government Operations; and
>
> The OMB Director rather than the OFPP Administrator would be authorized to rescind or veto the promulgation of agency regulations.

Notifying the entire Congress rather than certain committees of major policy changes will bring greater visibility to OFPP's efforts and we find this change unobjectionable. Authorizing the Director of OMB alone rather than the OFPP Administrator with concurrence of OMB to control agency regulations, as now provided in the bill, and requiring DOD, GSA, and NASA to certify that they have reached an impasse before allowing the OFPP Administrator to take action would, in our opinion, be counterproductive. If OFPP is to have responsibility for making needed improvements in federal procurement policies and practices, it must have the commensurate authority. Three situations we have encountered in our work illustrate the point well.

The new government-wide regulation known as the Federal Acquisition Regulation (FAR) is the first attempt to deal with the multiplicity of regulations governing the federal procurement system. It replaces three sets of primary regulations and significant parts of individual agency regulations with a unified regulation for all of government and industry to follow.

Development of the FAR was started under the auspices of OFPP in 1978 when the Office had regulatory authority. A simplified and unified regulation was originally scheduled to become effective in the spring of 1980. It was not published, however, until just recently and has an effective date of April 1984, four years later than originally planned. Despite the excellent work contributed by DOD, efforts to publish the FAR almost fell apart several times and at one point the project came to a standstill because of difficulties in resolving differences, largely between OFPP and DOD. If DOD's proposed change had been in effect during these difficulties, it is highly unlikely that OFPP would have received a certification of impasse. It is more likely, in our opinion, that the agencies would have either concluded that a FAR was unnecessary or they would have continued to seek resolution amongst themselves rather than turn to OFPP.

I say this because, even with the endorsement of the President's Cabinet Council on Management and Administration, neither OMB nor OFPP could keep things moving. Ultimately, publication of the FAR was achieved using the Paperwork Reduction Act as a lever. Using authority derived from this Act, OMB advised DOD that DOD's own regulation would not remain in effect after April 1984 except as a part of the FAR system.

Even though the FAR is to become effective next year, its future will be in doubt without OFPP regulatory authority. Maintaining the single regulation will be difficult. The regulatory councils established for the FAR—civil and defense—are independent and must approve each other's work. There is no stated mechanism for resolving disputes. OFPP needs authority to resolve disagreements among the agencies and between the independent councils so as to ensure integrity of the FAR system.

A second illustration concerns a proposed policy on competition that has been debated for over a year and is now out for public comment. OFPP's efforts to define and limit the conditions for contracting on a sole source basis have been long opposed by DOD and some other agencies. The policy letter has gotten as far as it has only because the President has become personally involved. It is doubtful that the agencies would have certified an impasse for resolution by OFPP.

Next, I would refer to our recent report on "Progress of Federal Procurement Reform Under Executive Order 12352." We visited twelve agencies who collectively spend 97 percent of government procurement dollars. Although the executive order puts OFPP in a leadership role, we found that most agencies consider themselves free to reject or unilaterally revise OFPP's policy guidance. As a consequence most agencies, including DOD, had not implemented the first in a series of important changes designed to improve the federal procurement process. This first change seeks to shift emphasis away from excessive reliance upon regulations toward managing the procurement system as a whole. It seeks to put someone in charge for example of (1) professionalizing the work force, (2) clarifying lines of authority, (3) simplifying operations, and (4) increasing competition. Lack of regulatory authority has undoubtedly hampered OFPP efforts toward achieving agency compliance.

Should Congress grant OFPP regulatory authority, it is important that its use be limited to oversight and conflict resolution. The current bill recognizes this in prohibiting OFPP from becoming involved in agency determinations of need or in individual procurement actions, and OFPP is required to consult both with the agencies and the Congress before it releases any new policies. The bill charges OFPP with "ensuring the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements." Finally, it is clear that agencies, including DOD, may issue regulations to meet their unique mission requirements.

Because OFPP has little more than a dozen professionals, it relies heavily on interagency task forces to help develop procurement policies. These task forces are frequently led by and staffed with experts from DOD. For example, as mentioned earlier, much of the work on the FAR and the policy guidance developed under the President's recent executive order was done with leadership and staffing provided by the three military services.

It should be noted that, at the time Congress removed OFPP's regulatory authority so OFPP could concentrate its full resources on developing a unified federal procurement system concept, it was intended that at completion of such task, regulatory authority would be restored. We at GAO understood that to be the case and we are aware that OMB had the same understanding at that time. We at GAO share the concerns of many in the procurement community that without restoration of regulatory authority to OFPP, much of the progress made to date will eventually dissipate.

This concludes my prepared statement, Mr. Chairman. I will be happy to respond to any questions you or other members of the Committee may have.

Chairman TOWER. Thank you, Mr. Socolar.

Mr. Fettig?

STATEMENT OF LESTER A. FETTIG, FORMER ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY

Mr. FETTIG. Yes, Mr. Chairman.

I would like to make an introductory comment. I will submit my statement for the record.

By the way of introduction, I do want to extend a compliment to you. It is incredible to me how much water you have been able to carry for the Defense Department and this administration on defense issues during the last several years. You have carried a marvelous burden for them and a lot of people in the community are very disappointed that you decided not to put yourself in the same position Mr. Evans is in today.

Chairman TOWER. Mr. Evans is young. He will learn more later.

Mr. FETTIG. I do want to point out also, since it is pertinent in this forum, that in addition to having served as the second Administrator of the Office of Federal Procurement Policy, defense acquisition policy and defense planning have been my professional specialties, and I have a great deal of affection and respect for Dr. DeLauer as well.

I have served on some very volatile defense science board task forces with him and have also lectured on the subject.

To the point on the regulatory issue, I would like to reason with you on two scores:

First there is no great threat to the Defense Department by giving the Administrator—I should say "restoring" to the Administrator—regulatory authority. On the contrary, without that authority, we will be missing some very substantial benefits, in particular I will note, for the Defense Department.

As for that "threat", I would just refer to history. I enjoyed regulatory authority during my tenure. I can say without equivocation there was no collapse, no unilateral interference on my part in the Defense Department missions. If I might just collect the examples that were thrown up of such annoying interventions in the past, I think they are thin at best and easily rebuttable.

Dr. DeLauer mentioned the recent problem with deferred compensation accounting. My goodness, OMB and the Treasury Department and everybody else have a say-so in how that is determined.

As for lobbying costs, I would blame OFPP for not jumping out front, perhaps because it did not *have* regulatory authority, to pick up the same good work that the Defense Department did and transfuse it Government-wide.

Dr. DeLauer complained about some regulations I issued governing payment of inflation cost to defense contractors. My gracious, if there was outside interference, I would have to point the finger at the President because the President ordered me to do that as part of the Government's anti-inflation program.

In the socio-economic area, it was a very unpleasant experience for me to issue regulations governing minority business set-aside and the women's preference program or labor surplus area programs. But I would point out in every case those OFPP regulations were issued in response to public laws passed by the Congress or, in the one case of the women's program, an Executive order dictated to me by the President.

It seems to me that if there is a threat, many of the arguments you heard today could be equally well made for the Congress itself, the President or the Office of Management and Budget.

As Mr. Beggs said, it would be nice to just have a business, but no Federal agency is an autonomous business. Every department is an element of Government.

With that, I would like to lead into what I would hope would be the strongest argument in your mind, Mr. Chairman. This OFPP case is a microcosm of the deepest underlying issues facing the Government:

Nobody knows how to manage the beast any more.

We have accumulated such an atrocious history of public laws, regulations, Executive orders, that the biggest challenge we have is to manage the Federal Government as a whole, duly respecting priorities of national security missions that DOD has to execute. Are we ever going to get a handle on that? We can't even today get done what we agree needs to be done.

Dick referred to the Carlucci initiatives. How many times have you heard people say, "Why can't we get anything implemented? Why don't we do what needs to be done? Why doesn't anything ever happen?"

To my mind, OFPP is an example that nothing will get done unless you create a strongly empowered Office to see to it that it does get done.

Let me address that need from the standpoint of allowing the "Little Troika" to go off and do their own thing, Defense, GSA, and NASA. That would be nice if they were the only part of the problem.

Unfortunately, there is a Small Business Administration duly empowered in public law. The Department of Commerce has responsibilities, the Labor Department, so many different agencies have their fingers in this procurement pie that Dr. DeLauer, Mr. Beggs, and Mr. Wright will be finding themselves quite disturbed and indeed looking to OFPP to keep control over Government-wide policy intervention.

It is a tremendous irony to me that when the regulatory authority was taken away in 1979 it was done at the instigation of Chairman Brooks on the House side.

Do you know why? Because he was quite disturbed that our activities included taking a look on DOD's behalf at some of the interventions that we are suffering under in ADP, that is to the Brooks Act, in GSA.

The second reason was Mr. Brooks did not take kindly to the fact that I initiated an attempt to at least reconcile another great debilitation for the Defense Department, and that was Labor Department intervention on DOD contracts.

Secretary Brown complained to the President. He had to come up with $200 million so that he could apply new Department of Labor wages to an Air Force engine overall contract.

The Office of Federal Procurement Policy acted as a strong authority and ally to prosecute these Government-wide issues. It is a lot more than the Defense Department holding off the small hordes from OFPP. They too have to suffer under all the interventions.

I've mentioned just a few, the Labor Department, the SBA, the list goes on. If you don't give the Administrator the regulatory authority, he doesn't have the bureaucratic tools to do his job and I would recommend you not reauthorize the Office without it.

I also say from firsthand experience, because I negotiated the deal, that you would not have a FAR, Federal acquisition regulation, today if I hadn't had regulatory authority. I initiated that project with the cooperation of Dr. DeLauer's predecessor, Bill Perry and his deputy, Dale Church.

It got to the point where the conversation went as follows: I can't go back up in 1979 and ask to be reauthorized unless I do something about 832 different sets of Federal procurement regulations. Will you help me?

There was no inclination on the Defense Department's part to do anything about it. They were quite content. I intimated that I felt the responsibility to do something with the authority I had and needed to rely on them.

It came to the point that had I not been able to say, "Something needs to be done and if you don't do it, I will," we would not have gotten that far off the ground.

I might also point out from keeping in touch with people around town since I have left, the FAR project is a stone that has been rolling downhill ever since regulatory authority was removed. I am glad it has not dissipated entirely.

In summary, I do have one specific recommendation. In light of the terrible burdens that the Administrator carries in large part in cooperation with DOD, I would suggest an amendment to the bill to authorize combat pay if you give regulatory authority.

It is not pleasant to be savaged by Mr. Addabbo and Mr. Brooks and other committees and yet that is part of the job of a strong Administrator. It is one I am sure the Defense Department officials, Stu Evans, and other people sitting here remember well and will testify to.

To conclude, I don't see the sense in perpetrating what would be another example of waste, fraud, and abuse by letting the Office go forward without regulatory authority. It would be a waste of several million dollars to pay for finger wagging and policy statements that everybody recognizes they need not heed.

It would be a fraud on the business community to make them believe there really is somebody in power to clean up this procurement mess Government-wide. I think it would be a tremendous abuse of future Administrators to go through what I did without regulatory authority to do something about the problems he is burdened with.

Thank you.

[The prepared statement of Lester A. Fettig follows:]

PREPARED STATEMENT OF LESTER A. FETTIG, FORMER ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY

Thank you for this opportunity to appear in a familiar setting. As OFPP Administrator between 1977 and 1979, I had occasion to come before this committee but more so, to work closely with the Committee and staff while I served as Staff Director of Senator Chiles' Subcommittee on Federal Spending Practices from 1973 to 1977.

I should also add by way of introduction that defense acquisition has been a professional specialty throughout my career—from aerospace and systems engineering with industry to stints with the Center for Naval Analyses. In all my government positions, I have been proud to be an advocate of a strong defense and strong, modern defense management. I'm proud of a record which earned me Honorary Membership in the National Security Industrial Association, Honorary Professorship at the Defense Systems Management College and that the National Defense University uses my writing on defense acquisition policy as course material each year.

As requested—and thanks to an exhaustive hearing record already left behind for over ten years—I will address my remarks directly to one issue before this Committee:

> Should the Office of Federal Procurement Policy be reauthorized with directive, regulatory authority?

My uneqivocal position is that OFPP, unless it *is* given regulatory authority should not be reauthorized at all. To reasons that point, I'd like to elaborate on two arguments:

(1) Regulatory authority poses no practical threat to Defense Department missions, programs or prerogatives; and

(2) A strong empowered OFPP offers definite benefits to government management, the President, the Congress—and, yes, even to the Defense Department.

THE "THREAT" TO DOD

These fears can be dispensed with quickly and the hypothetical bogeymen chased off with simple historical fact. OFPP, during my tenure, did have regulatory authority.

Those who seem to so fear OFPP's directive authority should look at the record during the period it was exercised. There was no collapse in agency mission performance, there was no heavy-handed intervention in contracting decisions, there was no unilateral dictum passed down with no consultation and consensus.

There may have been some annoyance, some extra effort required to reconcile government-wide policy issues, some reforms introduced which may not have otherwise come about. But this is hardly a record of uninformed or unchecked intervention in defense acquisition matters. In fact, my view of the OFPP–DOD relationship is not one of contest and dispute but a mutual reliance to search for contracting improvements. More often than not, it was DOD, with its vast pool of expertise, which provided the essential support for pursuing reforms:

The Federal Acquisition Regulation (FAR) Project which I initiated to replace over 800 different sets of regulations simply could not have been done without the agreement and leadership role assumed by DOD;

> The FAR writing itself could not have been done without a dedicated team of 40 DOD professionals led by Air Force Colonel John Slinkard and Navy Captain Vince Pistolessi;
>
> The mission planning requirements of OMB Circular A–109 would not have been so well emplaced without Air Force General Toomay;
>
> Simplified specifications, more competition and lower prices for commercial products would not have come about with Army Colonel Justin Holmes leading the effort;
>
> Reforms in subsistence procurement—meat, fish—would not have happened without the leadership of Navy Commodore Stu Platt;
>
> We would not have a centralized Federal Procurement Data System operating today if I didn't have the expertise of defense personnel to do it, civilian Joe Canata in particular.

The list could go on and on.

And, as a practical matter, even if the renewal legislation grants regulatory authority once again, any Secretary, Deputy or Undersecretary of Defense retains preemptive authority by virtue of his or her ability to simply pick up the phone to talk with the OMB Director. No OFPP Administrator is ever going to enjoy unilateral authority to intervene on issues where Defense has serious concerns.

So to those who would paint OFPP as a mischievous little David with an errant regulatory sling shot, have them just look at the record. They'll find a record of cooperation and good results. And where they point to disputes resolved in ways other than to DOD's liking, those resolutions fell well within the bounds of DOD's responsibilities as one part of a larger Federal government management enterprise.

THE CRITICAL NECESSITY FOR REGULATORY AUTHORITY

A strong, OFPP empowered with regulatory authority—reporting to the OMB Director, responsive to the President, accountable to the Congress—is the best case example we can find today of one of the underlying crises in American government: Simply, no one can manage the beast anymore. We've accumulated such a history of fragmentation—incoherent laws and regulations—bureaucratic turf divisions as real as any street gang's line down the middle of a block—that we can't hardly change things effectively any more—even when we know what needs to be done to improve government performance.

Federal procurement is perhaps the best and the worst case because it impinges on so many programs, agencies and actions. If there are any Federal functions that deserve this strong management responsiveness, it has to be Federal acquisition. Without that directive authority in statute behind the Administrator, even the most mundane chores would be difficult. Spearheading a particular reform simply could not be done without it—no less establishing a uniform Administration position on contracting issues.

Far from being a permanent obstacle, a duly empowered OFPP is exactly and the only way to address the severe problems which involve protracted inter-agency conflict, especially between the Defense Department and other socio-economic agencies who all have fingers in the procurement pie.

Will DOD always get its way? Of course not. But at least the mechanism will exist to begin resolving these debilitating management issues that will otherwise just fester, year after year, causing untold waste and management uncertainty.

It would be nice to pretend that DOD and, by comparison, two procurement pygmies—NASA and GSA—could go off into a corner and settle all the government procurement problems. It'll never happen—because there are other duly empowered actors to upset the little troika time and again: the Small Business Administration, the Labor Department, the Commerce Department, the Commissioner of Patents—all those agencies who, without an OFPP with regulatory authority—tend to behave rather like a crowd at a European soccer game—or, at best, pick up their balls and go home, leaving nothing improved.

There is another real advantage a strong OFPP with regulatory authority gives to DOD to which I can personally testify. The Administrator, with authority, serves as an excellent whipping boy. He can be villified before the Small Business Committees, savaged by Jack Brooks and Joe Addabbo, bear the sins of the Pentagon before the Labor Committees—all the while deflecting the wrath and energy left over for the Defense Department witnesses who follow.

I would strongly recommend that the Committee sponsor a floor amendment to authorize combat pay for the Administrator as compensation for his regulatory authority.

SUMMARY

In short, OFPP's reinstated regulatory authority poses no serious threat the Defense Department, as the record shows. Second, without directive authority, don't bother to reauthorize the Office. You will just perpetrate another case of waste, fraud and abuse:

> Waste of several million dollars for an Office of bureaucratic eunuchs—too high a price for waggling fingers and policy papers no one need heed;
>
> Fraud on innocent small businesses and others who will be led to believe that there really is someone to bring uniformity to government procurement; and
>
> Abuse of all future OFPP Administrators who will continue to take a beating for procurement sins before congressional committees—while having absolutely no way to get anything done about them.

My compliments to the Chairman and the Committee for investing the time and effort to engage in this issue. Many of us feel that beyond any particular weapon system, the most neglected—and potentially powerful—weapon in the American arsenal is the very management of defense contracts across the board.

Chairman TOWER. Thank you, Mr. Fettig.

Mr. Socolar, those who oppose the grant of regulatory authority to OFPP are concerned this may compromise national defense. Those who support the authority say it will promote uniformity in Government procurement.

In a tradeoff on OFPP policy goals, shouldn't we err on the side of a little less uniformity rather than a little less national security?

Mr. Socolar. If I thought there was any iota of a threat to national security, I would agree with you, Mr. Chairman, but I just simply do not see anything associated with granting regulatory authority to OFPP that would in the slightest impinge on our national security.

Chairman Tower. Thank you, Mr. Socolar.

Senator Cohen, I will yield the Chair to you.

Unfortunately, gentlemen, I am detained elsewhere.

I do appreciate your appearance today.

Dr. DeLauer has agreed to stay and is delighted to submit to any further cross-examination you might have.

Senator Cohen. Thank you, Mr. Chairman.

Chairman Tower. I trust you will conduct the meeting with the same decorum that has prevailed.

Senator Cohen [presiding]. Before the chairman leaves, for the benefit of those in the audience, I want to join in Les Fettig's statement about the chairman.

In my judgment, there has been no one individual who has done as much for the Department of Defense in many, many years in carrying its water.

I think that he has been singularly effective in undertaking to maintain a strong national defense, and any disagreements you hear up here have no reflection whatsoever about my opinion of him.

I hold him perhaps preeminent among all the Senators in this body, being not only my friend but somebody whom I admire deeply. So, don't misconstrue the little confrontations that we have and the same applies to Dr. DeLauer.

I have worked with him on a number of other matters and he has been most helpful to me. But it is all in the spirit of exchanging ideas. The truth is the ability to get it accepted in the marketplace. That is what we are trying to do, to arrive at some semblance of the truth and what is the best policy to be pursued.

Mr. Socolar, based on your monitoring of OFPP's activities since 1974, do you know of any case in which the use of OFPP's regulatory authority has injured our defense posture?

Mr. Socolar. No, I do not.

Senator Cohen. What in your judgment is the reason for the conflict that we have now, namely, the charge that we will totally undermine national security if we allow OFPP's regulatory authority to be reinstated? Is it national security or a turf battle?

Mr. Socolar. I don't know exactly what I would call it. I think it might well be a natural position for DOD, NASA, and GSA to be taking in light of the extremely broad arena they operate in with regard to procurement regulations.

I think what they overlook is the fact that while each of them covers a broad range of regulatory activity, when it is all added together, together with individual agency regulations by others, there is a lack of a kind of coordination that is necessary to enable people who deal with the Government to make the kind of sense out of all those regulations that will facilitate getting the job of the Government done.

With regard to your question, I just feel that there is a lack of appreciation of the full effect of what this diversity of regulations gives rise to.

Senator **Cohen**. I am a bit perplexed because Mr. Wright testified that OFPP has not operated any differently without regulatory authority in the past 4 years than when it had regulatory authority from 1974 to 1979.

Having made that observation, there is now a fear campaign being waged that somehow once the power is reinstated, it will be wielded in such a way as to take away our underpinning of the national defense. I don't understand that.

Mr. **Socolar**. OFPP even under S. 1001 fundamentally, in my view, would be functioning as a catalyst for a lot of procurement reform that needs to be accomplished.

Certainly in terms of the way OFPP has been operating with the agencies, there has evolved a spirit of cooperation, but not, I would say, full cooperation in the sense that might well exist if OFPP were to have its independent regulatory authority.

Today OFPP is much more at the mercy of the other agencies than it should be if it is going to carry out the kind of function that it is designed to accomplish.

I think, too, without regulatory authority, despite the cooperation that may well exist today, I suspect that in the long term that kind of cooperation would diminish rather than continue.

Senator **Cohen**. Mr. Hall, my understanding is you were loaned to the Government Operations Committee staff during its deliberations in 1979 over the OFPP reauthorization?

Mr. **Hall**. That is true.

Senator **Cohen**. Based on your experience, why was the mission of OFPP redirected?

Mr. **Hall**. The following transcended all the deliberations of the committee at that time. It was their view that when OFPP was originally set up it transitioned from a paper study stage—the Commission on Government Procurement—immediately into an operating stage, and skipped the develoment phase. So, it was the purpose of the committee to put OFPP back in a developmental mode for about 3 years. It gave OFPP three specific goals: to develop a procurement system concept, to modernize legislation, and to develop a management system.

It wanted to make sure those three goals were achieved and that it would not be diverted by anyone, including the President, from achieving those goals.

So, it wanted to remove the authority, the regulatory authority, temporarily during that period and only give it enough authority to hold the line.

The words they used at the time were "to make sure the situation did not get any worse."

It was also their intention that once OFPP had accomplished these tasks, the regulatory authority would be restored and, in fact, there are some notes of understanding between an OMB high-level official and the committee at the time evidencing that agreement.

Senator **Cohen**. Do you have copies of those notes?

Mr. Hall. Yes, I do.

Senator Cohen. Would you submit them to us for the record?

Mr. Hall. I will be glad to.

[The information follows:]

These notes were prepared by Whayne Granquist, Associate Director for Management who reported to the OMB Director:

Term: 3 years.

(a) OFPP to have authority/responsibility to initiate policies in conformance with policy of act and existing law (§ 401(1)-(6))—OMB to have authority to issue such policies.

(b) OMB to have authority to veto new procurement regulations of procurement agencies if they are found to be inconsistent with policies issued under (a) above.

(c) Scope of OFPP/OMB to exclude ADP telecommunications and real estate.

(d) OFPP to be charged with developing legislatively based uniform procurement system for schedule in H.R. 3763.

(e) Assumed that there will be a "regulatory" role for OFPP in the future, after the uniform system developed and approved by Congress.

Senator Cohen. It is your understanding that both GAO and OMB anticipated that the OFPP's regulatory authority would be reinstated?

Mr. Hall. Yes, sir. While I can't speak for the Comptroller General, I do not believe GAO would have endorsed the legislation without that understanding.

Senator Cohen. Were you also loaned to OFPP for a year during the development of the uniform Federal procurement system?

Mr. Hall. Yes, sir.

Senator Cohen. What was the nature of OFPP's relationship with DOD in trying to pursue that effort?

Mr. Hall. I was on loan and was actually representing the OMB because I was on a reimbursable basis. At that time there were difficulties in getting some assistance and cooperation from DOD.

Now, I want to qualify that. Most of DOD has always cooperated in these endeavors. This problem concerned a very small fraction of the Department. There were times when they would not participate in the development phase. Frequently they would not participate in meetings on the proposed legislation.

Finally, at the end they demanded certain concessions. This put the Office and OMB in a very difficult position. Some concessions were extracted. One of them, incidentally, was regulatory authority. That is not in the proposal that was submitted by the administration.

Senator Cohen. What do you mean by extracted concessions? Would you make that clear for me?

Mr. Hall. This is an administration proposal representing not just OFPP's view or OMB's view, but the entire Government.

In order to get that proposal officially submitted to the Congress, you needed Defense Department agreement and they refused to agree with the proposal if regulatory authority was included.

Senator Cohen. That was the price tag?

Mr. Hall. There were other price tags. They insisted on a test of the new statutory provisions on competition. They opposed submission of any legislative proposal. That caused about a 2-month delay.

As far as the Executive order, it was also negotiated at the same time. We had to put in a rather weak role for OFPP in the Executive order due to, again, the price of getting it out.

Senator COHEN. Dr. DeLauer, you can leave if you like. I have one more vote to catch. I will ask that the rest of the panel will remain for 10 or 15 minutes. I have a few more questions.

The committee will stand in recess for 10 minutes.

[Recess.]

Senator COHEN. The Chair would like to recognize Senator Evans.

Senator EVANS. Mr. Socolar, we heard testimony earlier this morning that in essence it is impossible to operate effectively unless you write your own regulations to carry out your business.

Do you wish to comment on that statement, the effectiveness or the validity of it?

Mr. SOCOLAR. To a certain extent I think that is true if we are talking about another authority that is going to come in and completely foil every regulatory effort that you initiate.

I also think that in the context of the debate that we are having here that it is simply inapplicable to the kind of oversight and conflict resolution that OFPP's function would entail. I don't see the kind of intrusion that would be a cause for concern.

Senator EVANS. I served for 12 years as Governor of the State of Washington and during most of that period I was trying to convince the legislature that they should spend more not less time on oversight.

That was one of the missing links if we were to do as the constitution of our State says, and I expect the words are pretty similar in the U.S. Constitution, that the Executive is to basically execute the laws established by the Congress or by the legislature. It seems to me that this is an appropriate way to try to bring these various elements of the same executive branch together.

I haven't been here very long, but this level of Government appears similar to the State level and the turf smells and looks pretty much the same. No matter what level you are talking about, however, and it smells an awful lot like a turf battle.

Senator COHEN. If I could pose a couple of questions, Mr. Socolar.

You testified that the DOD proposed change in this bill would limit OFPP's regulatory authority to situations when the DOD, GSA, and NASA certified irreconcilable conflicts among them.

What is your reaction to such a change?

Mr. SOCOLAR. I think the purpose for giving OFPP regulatory authority is precisely for the purpose of moving into areas where the three, particularly the three major procurement entities in Government cannot reach agreement, where there are differences that are largely irreconcilable, and to require that those three must come to OFPP rather than for OFPP to step in and serve in that catalytic role, it seems to me, would completely strip OFPP of any meaningful role.

I doubt very seriously, if the three couldn't agree, that they would be coming to OFPP to be the final arbiter over their disagreements.

Senator COHEN. You have indicated the proposal would be counterproductive. The American Bar Association writes this would undermine the OFPP Administrator's effectiveness.

The chamber of commerce says the proposed revision would nullify the OFPP Administrator's authority for all purposes.

A former Administrator states that OFPP would be at the mercy of DOD.

[The information follows:]

Chamber of Commerce
of the
United States of America

Hilton Davis
Vice President
Legislative and Political Affairs

1615 H Street, N.W.
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202/463-5000

October 14, 1983

The Honorable William S. Cohen, Chairman
Subcommittee on Oversight of Government
  Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in reply to your letter of October 11, 1983, which requested the U.S. Chamber's position regarding a proposed revision to S. 1001. This revision would restore the Office of Federal Procurement Policy (OFPP) Administrator's regulatory authority only where the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA) and the General Services Administration (GSA) certify they cannot reach agreement and request the Administrator to resolve their impasse; require OFPP policy statements and proposed rules to be submitted to Congress, as opposed to specified committees; and authorize the Office of Management and Budget (OMB) Director, rather than the OFPP Administrator, to deny or rescind agency regulations.

The Chamber is strongly opposed to the proposed revision to S. 1001 which would restrict the exercise of the OFPP Administrator's regulatory authority. We have no objection to the proposed revision regarding the submission of OFPP rules to Congress, and vesting authority to deny or rescind agency regulations in the OMB Director.

The Chamber supports S. 1001 and endorses the restoration of the OFPP Administrator's statutory authority to prescribe government-wide procurement policies and regulations. In our opinion, the proposed revision with respect to the Administrator's regulatory authority would nullify the Administrator's authority for all practical purposes. Instead of the leadership responsiblities contemplated by S. 1001, the Administrator's role would be reduced to that of an arbitrator. There is a continuing need for an office (OFPP), independent of the procuring agencies, that has responsibilities to Congress, and the authority to initiate, develop, and prescribe policies and regulations that will improve and simplify government procurement. The importance of this function has not been lessened by the recent joint issuance of the Federal Acquisition Regulation (FAR) by DOD, NASA, and GSA.

Although the proposed revision appears to apply only to DOD, NASA, and GSA impasses, it would surely also limit the Administrator's authority to initiate and develop new or revised policies and regulations where the agencies fail to act.

We understand that concerns have been expressed that the OFPP Administrator could use the regulatory authority contemplated by S. 1001 in a unilateral way and adversely affect the procuring agencies. In our opinion, these concerns are unwarranted in light of the safeguards contained in S. 1001. Such safeguards include the requirement to consult with affected agencies, the obligation to hold public meetings in developing procurement policies and regulations, and the mandate to file a report with the appropriate committees of Congress prior to the effective date of any major policy or regulation. These provisions also provide substantially greater protection for the contractor community than exists under current law.

Cordially,

Hilton Davis

Hilton Davis

American Bar Association

GOVERNMENTAL AFFAIRS GROUP
DIRECTOR
Robert D. Evans
STAFF DIRECTOR FOR GOVERNMENTAL LIAISON
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Peggy A. Richter
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Dean R. Owen

October 14, 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing in response to your letter of October 11, 1983, regarding proposed revisions to S.1101 with respect to restoration of OFPP's regulatory authority. One of the proposed revisions would allow the OFPP Administrator to exercise regulatory authority only when DOD, NASA and GSA certify they are unable to reach agreement on a particular government-wide procurement policy and request the OFPP Administrator to resolve the impasse.

By letter dated October 4, 1983, the American Bar Association restated its strong support for S.1001 as reported by the Governmental Affairs Committee. In that letter, we said that the restoration of OFPP's regulatory authority is "an important step in the continuing efforts to improve the federal procurement process."

The proposed restriction on the OFPP Administrator's authority to issue policies and regulations would seriously undermine the Administrator's effectiveness in providing "overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies" as specified in Section 6(a) of S.1001. The proposed restriction would limit the Administrator's "leadership" role to situations where DOD/NASA/GSA asked for assistance. Instead of functioning as a leader, the Administrator would become an arbitrator. Moreover, while the proposed restriction only addresses situations where there is a DOD/NASA/GSA impasse, its very existence would have a chilling effect on the Administrator's role in initiating and developing new policies and regulations which may be needed and have not been the subject of proposed revisions to the FAR by the DAR and CAA Councils.

In this regard we note S.1001 contains requirements for the OFPP Administrator to consult with affected agencies on his actions, and to file a report with the appropriate committees of Congress at least 30 days in advance of the effective date of any major policy or regulation. Also the Administrator is required to hold open meetings in the development of procurement policies and regulations, and to provide at least ten days prior public notice of such meetings. These provisions provide substantial safeguards against the possibility of unilateral action that might adversely affect the procuring agencies. To further both public participation and agency consideration of proposed policies and regulations, including contract clauses, the ABA recommends the inclusion of language in S.1001 requiring the issuance of government-wide procurement policies, regulations, procedures, and forms through procedures compatible with those required under the Administrative Procedure Act.

For the reasons stated above, the ABA strongly opposes the proposed restriction on the OFPP Administrator's authority to prescribe government-wide procurement policies and regulations. With respect to the revisions requiring the Administrator to submit proposed rules to the Congress rather than specified committees, the ABA has no objection. While we believe it is unnecessary to place the authority to deny or rescind agency regulations with the OMB Director, rather than the OFPP Administrator, ABA does not oppose this revision.

Sincerely,

Robert D. Evans

Robert D. Evans

RDE:cwa

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October 18, 1983

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098:emg

Honorable William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Cohen:

I write to express my continuing support for S. 1001, the Office of Federal Procurement Act Amendments of 1983. As a former Administrator of OFPP, I wrote to you in April to endorse immediate reauthorization of OFPP -- with restored regulatory authority -- to permit the Administrator to take a leadership role in meeting the challenge for procurement reform on a government-wide basis. (See attached letter.)

I have reviewed the legislation drafted by your subcommittee and the full Senate Committee on Governmental Affairs as well as that reported by Chairman Brooks and passed by the House. Both bills grant limited regulatory authority to the Administrator. They also ensure that OFPP does not interfere in an agency's day-to-day procurement activities, including the determination of the need for, or use of, specific property or services or specific contract actions. There is no ambiguity in the legislation or reports issued by either House with respect to establishing this guidance and other safeguards against potential abuse of regulatory authority by the Administrator of OFPP.

Nonetheless, I understand that the Department of Defense (DOD) and members of the Senate Armed Services Committee have recently raised some questions about the scope of the regulatory authority in S. 1001. It is my further understanding that the DOD would support restoration of OFPP's regulatory authority in the event that the following legislative changes were adopted:

(1) policy statements or proposals of the OFPP were submitted to the full Congress, as opposed to only the respective authorizing committees;

(2) the director of OMB, rather than the Administrator of OFPP, would be authorized to deny promulgation of or rescind regulations and

(3) the FAR Regulatory Agencies -- DOD, GSA and NASA --would certify to the Administrator that they were unable to reach agreement on a particular government-wide procurement policy and request that the Administrator issue a regulation resolving the dispute.

While I would not envision any problems with the first two modifications above recommended by the DOD, I am very troubled by the negative implications of incorporating the third proposed revision into the reauthorization legislation. The "certification of disagreement" procedure suggested by DOD runs counter to the thrust and to the reality which has characterized procurement reform since the days of the Commission on Government Procurement. The ability of the agencies and OFPP to work together to fashion a consensus for procurement reform is the only way that effective procurement reform has been and will continue to be developed and implemented. In the majority of cases consensus will be achieved with relative ease and it will not be necessary for OFPP to exercise its regulatory authority. The key impetus and rationale for restoring regulatory authority to OFPP is to assure that it is a full-fledged partner at the bargaining table in problem cases. As a consensus is being developed in those difficult cases, OFPP can serve as the motivator to promote a timely resolution of disputed policies and regulations.

As a former Administrator of OFPP, I know only too well the disability that an Administrator must bear in the absence of full regulatory authority. Since OFPP is charged with reviewing and developing procurement reform from a government-wide prospective, it is insulated from federal agencies' narrower interests. Without the potential for exercising its regulatory authority, however, OFPP's views are often not taken seriously. At the same time, OFPP must work always to develop a consensus among the agencies if it is to help implement procurement reform policies on competition and related subjects and a successful new Federal Acquisition Regulation (FAR). The three lead issues which have authority to issue regulations -- DOD, NASA and GSA -- can avoid any need for OFPP's utilization of regulatory authority _if_ they are successful in maintaining the FAR and resolving all regulatory disputes internally. OFPP can and should play an important role in facilitating this process.

The legislation, endorsed by both authorizing committees, envisions that OFPP's regulatory authority would only need to be used when there is a conflict among the agencies or when they refuse to act on procurement reform. The personality of the Administrator, his or her relationship with the Director of OMB and his or her persuasive ability, in developing a consensus will be the most important ingredients for success. Obviously, in a situation where there is disagreement among the agencies on a regulatory matter, the OFPP, being closely involved in monitoring regulatory developments, will be aware of these kinds of problems and will work to avoid the need for imposing a regulatory solution.

The DOD proposal would require a formal certification of disagreement from the agencies before OFPP could act to resolve a dispute. Thus, one agency, which was at odds with the others, could further thwart efforts to advance procurement reform by refusing to certify to the disagreement. It could simply say that it needed additional time to review the respective points of view and was not in "disagreement". In my view such delaying tactics would undermine the ability of OFPP to effectively exercise its dispute resolution role. Practically speaking, it would put OFPP at the mercy of DOD.

DOD is concerned that OFPP will abandon all reason, abuse its regulatory authority, and undermine the Defense Department's procurement policies at the expense of national security. This reasoning appears to have no legal or practical justification. There are significant safeguards within both bills to assure that OFPP does not overstep its authority with respect to DOD, OMB or any civilian agency. Specifically, OFPP may not interfere with any procurement regulation which DOD determines is necessary because of its unique agency needs and OFPP's role is limited to regulations having government-wide application. Moreover, OFPP is prohibited from interfering with any agency action on a specific contract and thus could not direct DOD acquisition of a specific weapon system.

The bill provides also for Congressional oversight of major policies and regulations. The proposed DOD amendment to broaden specific review by the Armed Services Committee, as well as the Governmental Affairs and Government Operations Committees, will assure close scrutiny of any major policies or regulation by those key committees. Any jurisdictional differences between the Governmental Affairs and Armed Services Committees should be eliminated by virtue of including reference to their specific role in the oversight process and clarifying the role of the OMB Director in rescinding regulations.

I would hate to see the future, long-term relationship of OFPP, OMB, DOD and the other executive agencies jeopardized by any last-minute amendment whose full negative implications have not been considered. OFPP should be able to rely on the Defense Department to assist the civilian agencies with constructive recommendations for reform of their procurement processes. Given the size of the DOD procurement budget and the expertise of the Department in this area, it has always been my strong belief that DOD can be a much more effective force working within the system, as part of a government-wide reform effort, than standing on the outside as a critic of the process.

In order to assist the Congress and the Administration in meeting their goals for effective management and expenditure of the American tax dollar OFPP must take the lead in procurement reform with the authority to resolve government-wide procurement disputes. Establishing a strong OFPP is not a partisan issue. It is embraced by strong Democrats and Republicans alike, as an important and critical element in achieving progress in procurement reform.

With the public assurance and reiteration of the intended scope of regulatory authority for OFPP the prompt enactment of S. 1001 at the earliest possible date should be a high priority for the Congress.

Sincerely,

Karen Hastie Williams

Enclosure

cc: The Honorable Carl Levin

JOHN CIBINIC, JR.
8222 TOLL HOUSE ROAD
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October 18, 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight of
Government Management
United States Senate
Washington, D.C. 20510

Dear Senator Cohen:

This is in response to your October 11, 1983 request for my evaluation of the feasibility and desirability of a proposal to limit the Office of Federal Procurement Policy's (OFPP) authority to issue regulations to those cases in which the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the General Services Administration (GSA) certify that they are unable to reach agreement on a particular government-wide procurement policy. This proposal is an unworkable monstrosity, the result of which would be to effectively deprive the OFPP of the regulatory power, which has been considered so essential to meaningful procurement reform by the overwhelming majority of persons and organizations involved in Government contracting. The DOD or any of the other agencies could prevent OFPP from exercising even such unacceptably meager "authority" simply by refusing to certify. Another way of circumventing this scheme would be for the agencies to adopt rules explicitly permitting each agency to go its own way on a particular matter, which unfortunately is what they have done in many cases in the Federal Acquisition Regulation (FAR). Another problem with this proposal is that if such regulations ever were issued, there would be an additional layering of regulations rather than consolidation and simplification.

DOD has opposed the granting of regulatory authority to the OFPP on the grounds that it would impede DOD's ability to provide for national security. I know of no situation past or present and can think of none in the future in which procurement regulations or procurement statutes would have such an effect. However, in the unlikely and improbable event that a procurement regulation would have such an effect, I would suggest that the Secretary of Defense be given the non-delegable authority to waive procurement regulations for individual procurements when he finds that a regulation would interfere with DOD's national security mission. This would give DOD assurance that its national security mission would not be impeded. Incidentally, the Secretary has a similar power with respect to certain laws under Public Law 85-804, 50 U.S.C. section 1431. I would recommend that the waivers made under this provision be reported to Congress at least annually.

This waiver authority should be sufficient to allay any legitimate national security mission fears which DOD may possess. However, it certainly would not satisfy their desire to maintain the status quo bureaucracy which has traditionally had a divisive effect and will perpetuate an inefficient proliferation of procurement regulations. DOD has in the past "bullied" the OFPP and other procurement agencies to adopt their regulatory positions with the threat that they would "go it alone." The sorrowful Uniform Procurement System proposal was a result of that kind of threat in operation. Without regulatory authority in OFPP, I would expect that scenario to be replayed many times in the future as it has in the past. If DOD would put more of its procurement manpower and energy into better managing its procurement activities rather than in attempting to thwart legitimate reform, we might see some meaningful reductions in improper noncompetitive procurements and might avoid such procurement scandals as the recent spare parts episodes.

I hope that you will be successful in your continued attempts to bring procurement reform to all agencies of the Government, including DOD. A strong OFPP with regulatory authority is a necessary first step. I am pleased to continue to work with you in these efforts.

Sincerely,

John Cibinic, Jr.

Senator COHEN. Mr. Fettig, what is your reaction to such an amendment?

Mr. FETTIG. I object to it for the same reason, Mr. Chairman. I only elaborate in a practical manner.

I meant no disrespect in my statement when I referred to GSA and NASA as "procurement pigmies," but the bureaucratic facts of life are that neither agency, nor both in concert, is likely to stand up to a strongly held DOD position.

The likely outcome, rather than running to an OFPP Administrator, would be that you would get the lowest common denominator acceptance imposed, the three will go their own way again and perpetuate proliferation of different procurement practices.

Senator COHEN. Mr. Socolar, is it your experience that most agencies, including DOD, are all but ignoring the policy guidelines put out by OMB?

Mr. SOCOLAR. I would not say they are all but ignoring. I think here again the issue is the timing of compliance, for example, with regard to Executive Order 12352. OFPP without regulatory authority has not been able to bring agencies into line despite the fact that under the Executive order OFPP has been designated as the lead agency for effectuating all of those requirements.

It simply takes a long time and OFPP, not having any muscle at all, simply takes a longer time to get the kind of things that need to be accomplished actually done.

Senator COHEN. Speaking of time, Mr. Fettig, you were involved in the initial development of the FAR, were you not?

Mr. FETTIG. Yes, sir; that was my initiative.

Senator COHEN. That was supposed to have been published back in the spring of 1980. It is 3½ years later that it was finally published, not to become effective until April 1, 1984.

What was the delay in issuing the FAR?

Mr. FETTIG. I can only speak directly to the progress during my tenure and the pace and the reasons I thought it was moving along and then my deductions on what has happened since.

I certainly do not mean to imply criticism of any individual, Don Sowle in particular.

As I explained during my testimony, the project never would have been started if I did not have the regulatory threat to say this was a problem that had gone on too long. Something would be done about it.

I earnestly needed the Defense Department's help and, indeed, once they concluded some action needed to be taken. they went to extraordinary lengths. The 40-member writing team that allowed us to set that very realistic 1980 schedule was principally composed of Defense Department professionals, outstanding men and women.

I remember them well. Navy Captain Pistolessi, Col. John Slinkard, a dedicated team put together that I can only say began to dissipate for lack of topside support, as it has been explained to me by the people who have been involved in the project since.

Senator COHEN. You mentioned during your previous questioning that FAR was a rock which was rolling downhill.

What did you mean by that?

Mr. FETTIG. Yes, sir. Enormous frustration.

After 1979, with the change of administrations, as it has been expressed to me, there was no longer the topside forcefulness in seeing the project come about to fruition. The original milestones that were set, and for the most part being met, were subjected to a whole variety of bureaucratic battles over who should be extended, who should pay for this, who should do this, objections over patent policy which I think is yet to come out.

In general, I would point to that whole situation as a good example of what happens when you don't have a strong Administrator with regulatory authority to move forward.

You do get the lowest common denominator performance out of the individual agencies.

Senator COHEN. Would there be any difficulty in your judgment in maintaining the FAR once it becomes effective?

Mr. FETTIG. Yes, absolutely.

Without regulatory authority, what I would predict would happen is that the legitimate loopholes that are there for protection of individual agencies, like the Defense Department, will be exercised commonly and frequently; and given a number of years, any small businessman or woman who would like to market to the Federal Government would have to go back and reeducate himself or herself on many variations.

Unless there is strong topside direction, you can expect that dissipation to set in again.

Senator COHEN. Once the FAR system becomes effective, it will consist of two separate regulatory account councils. Those councils can balance proposed regulations back and forth between them and never reach a result, unless OFPP has regulatory authority to reconcile differences and initiate action.

Mr. FETTIG. Indeed, that is what began to happen when I was Administrator. We had a fixed handover schedule between Defense, NASA, and GSA writing teams. We set a fixed part submission in order to keep the project rolling.

One team would be assigned the lead writing role and would hand it over to the other side. They would have to get it back with their comments within a fixed time.

That began to drag out. I simply asserted that if the delays went too long, I would adjudicate and under my own authority make a determination as to which form was most appropriate, but we would go forward.

Again, I am not the person to speak to directly about what happened thereafter, but I have been told that those handovers became more and more extended, more squabbling, more delays, and it all added up to the approximately 3-year extension you see now.

Senator COHEN. I have one final question for all of you.

The major thrust of the objections of those who were here this morning is that reinstating OFPP's regulatory authority would undermine the national security of this country.

I would like each of you to comment for the record whether there is any merit or validity to that statement.

Mr. SOCOLAR. In my judgment, there is nothing in giving OFPP regulatory authority that would in any way affect the national security interests of our country. That is as succinctly as I can state it.

Senator COHEN. Mr. Hall?

Mr. HALL. At the direction of the Congress, we followed OFPP activities over the last 10 years. We know of no single instance of a problem in national security or defense posture, or any deterioration due to this authority or any action of OFPP.

Senator COHEN. Mr. Fettig?

Mr. FETTIG. I would like to go a step beyond, Mr. Chairman, and say in a very, very personal way that what motivated me for the 10 years of my professional career on the Hill and downtown and in industry to defense issues is my deep concern that this country's national defense suffers when it is insulated, when we do not advance the technology of defense management along with the technology of our weapon systems.

Ernst Heinkel, who was one of the greatest aircraft designers ever to live, ranking with Kelly Johnson and Dutch Kindelberger, wrote a poignant autobiography called Stormy Life where he described the total debilitation of the German Luftwaffe and why, fortunately for us, they were unable to win a war when their defense talents had every wherewithal to build and deploy four-engine bombers that, within a year, would have been striking New York.

He explained how, incredibly, an insulated bureaucracy started fixing on the wrong priorities, squabbling among themselves, failed to adhere to even the most rudimentary good management principles and the whole of the Luftwaffe operation essentially fell apart from the inside, notwithstanding the enormous talents of the German engineering technical community.

My concern has been always a strong defense. I have always had a public posture and I hope a public reputation of being a very, very strong defense advocate and some of the honors I have received I think reflect that.

More than saying a strong OFPP is no deterrent to a strong national defense, I strenuously argue that having such a provocateur to demand the best and most modern advances in defense management is something we should not do without.

I think it is a definite contributor to our national defense effort. I have an enormous respect for Dr. DeLauer but it is a simple principle of institutional behavior that the more insulation, the less pressure. He said. "We don't want any more pressure." The less pressure you have, the less provocation for improvement, and the less you will see. I feel very strongly about that.

Senator COHEN. Part of the difficulty for those of us who serve on this committee. and others, is trying to maintain a consensus in this country for a strong national defense.

I get somewhat concerned that people. be it the Pentagon or elsewhere. suggest any one of us is trying to decimate the national security of this country.

I would be prepared to match my voting record and advocacy in defense matters with anybody on the committee, either here in the Senate or in the House. indeed including the chairman, in coming out for a strong national defense.

But to raise the argument constantly that somehow any change will undermine our national security, to me undermines the legitimacy of the argument.

That is something I recall going back to the days when I was in the House Judiciary Committee. We had the words called "executive privilege."

I think it is a very sound, important document, but when you invoke it for the wrong reasons, when you invoke it so frequently, it loses its merit in terms of credibility and implication and thereby undermines the document and ultimately the presidency itself.

So, I am concerned that any change, no matter how small, is regarded as a challenge to our national security.

I think we will have a great deal of difficulty in the coming Congress maintaining a consensus for national defense and spending that will be required if the people suspect, and they have reason to suspect, that their money is not being well spent.

The recent example of year-end spending in which the DOD spent $4 billion on the last day of the last fiscal year, and the spare parts horror stories in which diodes worth 4 cents cost $400, will cause our constituents to feel that we are really wasting too much money and to recommend that we cut it dramatically.

I think that would be a mistake. I would hope that those agencies which are concerned about this will see that we are really trying to serve the overall public purpose to hold on to the confidence of the people that we represent, and that we are, in fact, spending their dollars wisely. Reauthorizing the OFPP is a step in that direction.

Thank you, gentlemen.

The committee stands adjourned.

Mr. **Socolar**. Thank you.

Mr. **Fettig**. Thank you.

[The following questions were submitted by the Senators of the Senate Armed Services Committee to be answered for the record:]

QUESTIONS SUBMITTED BY SENATOR SAM NUNN

RESOLVE DISAGREEMENTS

Senator **Nunn**. Mr. Socolar, GAO's recent report on "Progress of Federal Procurement Reform Under Executive Order 12352" states that "such [regulatory] authority would enable OFPP to resolve disagreements between agencies with authority to issue regulations."

Is that the primary problem here, the need to have a focus of authority that can resolve disagreements between agencies?

Does the statutory language of S. 1001 limit OFPP's ability to exercise regulatory authority to situations where there are disagreements to resolve?

Should it be so limited?

If not, why not?

Mr. **Socolar**. The ability to resolve agency disagreements is only part of the problem. The more fundamental one is the need to deal with agency delay and inaction of which there are several illustrations in our statement.

In answer to your second question, presently, the statutory language in S. 1001 does not limit OFPP's regulatory authority to specific situations. If appropriate language can be devised we would agree with such an addition to the bill.

However, we would stress that such language needs to be broad enough to give OFPP authority to deal with situations where there is undue delay or failure to act. In addition, as I testified earlier, it is impractical to expect the agencies to certify to the OFPP Administrator that they have reached an impasse. We believe strongly that the OFPP Administrator must have the discretion to use the authority, although we would expect it to be used rarely. Finally, there is the problem, as I mentioned to Senator Cohen, of giving OFPP enough stature to attract good people to perform its policy leadership functions.

ABILITY TO RESOLVE CONFLICTS OR SITUATIONS WHERE THERE IS A FAILURE TO ACT

Senator NUNN. Dr. DeLauer, should there be an agency or office with the authority to resolve disagreements between, for example, DOD and NASA over elements or provisions of the Federal acquisition regulations?

If not, why not?

What about the situation where a Federal agency is reluctant or lethargic in taking action on a procurement reform?

Should there not be some focus of authority to move the process along? I am sure that you have such a process in DOD.

If not, why not?

Dr. DELAUER. The answer to the first question is yes, and that office is designated in Executive Order 12352 as the Office of Management and Budget. The Executive Order states, in Section 4(b), that the Director of the Office of Management and Budget, through the Office of Federal Procurement Policy, as appropriate, has the responsibility for "facilitating the resoution of conflicting views among those agencies having regulatory authority with respect to Government-wide procurement regulations." We agree that this is a proper role for OMB.

The answer to the second question is it is the heads of executive agencies that have the primary responsibility for insuring that procurement reforms are carried out. Under the Executive Order, the heads of executive agencies are required to designate, in writing, a procurement executive. The Under Secretary of Defense for Research and Engineering is our procurement executive. The procurement executive is therefore responsible for ensuring prompt and timely execution of procurement reforms. A copy of the letter appointing the Under Secretary of Defense for Research and Engineering (USDRE) as the procurement executive is attached for your information.

THE DEPUTY SECRETARY OF DEFENSE,
Washington, D.C., June 8, 1983.

Memorandum for Secretaries of the Military Departments; Chairman of the Joint Chiefs of Staff; Under Secretaries of Defense; Assistant Secretaries of Defense; General Counsel; Inspector General; Assistants to the Secretary of Defense; and Directors of the Defense Agencies.

Subject: Responsibilities and Authority of the Under Secretary of Defense for Research and Engineering (USDRE) as the Department of Defense (DoD) Procurement Executive.

As required by Section 1, paragraph (i) of Executive Order 12352, Federal Procurement Reforms, dated March 17, 1982, the USDRE is hereby delegated all authority that is necessary to fulfill the responsibilities of the DoD Procurement Executive. Procurement Executive responsibilities are to:

Prescribe and publish DoD procurement policies and procedures;

Enter into and make determinations and decisions, and take other actions consistent with appropriate policies, regulations, and procedures with respect to purchases, contracts, leases, sales agreements, and other transactions, except those required by law or other DoD regulations to be made by other authority;

Insure the establishment of clear lines of contracting authority, including the designation of Heads of Procuring Activities;

Establish criteria/guidelines for the designation of Contracting Officers and their representatives and designate Contracting Officers as appropriate;

Oversee the maintenance of Department procurement systems and modifications/revisions as appropriate;

Evaluate and monitor the performance of the procurement system in accordance with established criteria;

Certify to the Secretary of Defense that the procurement system meets established criteria;

Be the overall DoD advocate for competition; and

Establish programs/guidance to enhance career development of the procurement workforce.

PAUL THAYER.

PROCEDURAL MECHANISMS TO MAINTAIN THE FAR

Senator NUNN. Mr. Beggs, NASA's May 19, 1983, letter to Senator Cohen states that "The responsible agencies have established the necessary organizational and procedural mechanisms to maintain the FAR once it becomes effective."

What are those mechanisms?

How will they resolve a situation where there is genuine and continued disagreement between the "responsible agencies"?

Please be specific in your answer.

Mr. BEGGS. FAR Subpart 1.2—Administration, prescribes the organizational and procedural mechanisms to maintain the FAR when it becomes effective. (Copy attached.)

[From Federal Register, Rules and Regulations, p. 42104, Sept. 19, 1983]

SUBPART 1.2—ADMINISTRATION

1.201 MAINTENANCE OF THE FAR

1.201-1 The two councils

(a) Subject to the authorities discussed in 1.102, revisions to the FAR will be prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulatory Council (DAR Council) and the Civilian Agency Acquisition Council (CAA Council). Members of these councils shall—

(1) Represent their agencies on a fulltime basis;

(2) Be selected for their superior qualifications in terms of acquisition experience and demonstrated professional expertise; and

(3) Be funded by their respective agencies.

(b) The chairperson of the CAA council shall be the representative of the Administrator of General Services. The other members of this council shall be one each representative from the (1) Departments of Agriculture, Commerce, Energy, Health and Human Services, Housing and Urban Development, Interior, Labor, and Transportation, and (2) Environmental Protection Agency. Small Business Administration, and Veterans Administration.

(c) The Director of the DAR Council shall be the representative of the Secretary of Defense. The operation of the DAR Council will be as prescribed by the Secretary of Defense. Membership shall include representatives of the military Departments, the Defense Logistics Agency, and the National Aeronautics and Space Administration.

(d) Responsibility for processing revisions to the FAR is apportioned by the two councils so that each council has cognizance over specified parts or subparts.

(e) Each council shall be responsible for—

(1) Agreeing on all revisions with the other council;

(2) Submitting to the FAR Secretariat (see 1.201-2) the information required under paragraphs 1.501(c) and (e) for publication in the Federal Register of a notice soliciting comments on a proposed revision to the FAR;

(3) Considering all comments received in response to notice of proposed revisions;

(4) Arranging for public meetings;

(5) Preparing any final revision in the appropriate FAR format and language; and

(6) Submitting any final revision to the FAR Secretariat for publication in the Federal Register and printing for distribution.

1.201-2 FAR Secretariat

(a) The General Services Administration is responsible for establishing and operating the FAR Secretariat to print, publish, and distribute the FAR through the Code of Federal Regulations system (including a loose-leaf edition with periodic updates).

(b) Additionally, the FAR Secretariat shall provide the two councils with centralized services for—

(1) Keeping a synopsis of current FAR cases and their status;

(2) Assigning FAR case numbers;

(3) Maintaining official files;

(4) Assisting parties interested in reviewing the files on completed cases; and

(5) Performing miscellaneous administrative tasks pertaining to the maintenance of the FAR.

1.202 Agency compliance with the FAR

Agency compliance with the FAR (see 1.304) is the responsibility of the Secretary of Defense (for the military departments and defense agencies), the Administrator of General Services (for civilian agencies other than NASA), and the Administrator of NASA (for NASA activities).

Sec. 4(b) of Executive Order 12352 provides that the Director of the Office of Management and Budget, through the Office of Federal Procurement Policy as appropriate, shall facilitate the resolution of conflicting views among those agencies having regulatory authority with respect to government-wide procurement regulations.

OFPP NONINTERFERENCE WITH REGS WHICH DOD DETERMINES ARE NECESSARY BECAUSE OF DOD'S NEEDS

Senator NUNN. Mr. Fettig, does S. 1001 as reported by the Committee on Governmental Affairs prevent OFPP from interfering with any procurement regulation which the Department of Defense determines is necessary because of its unique needs?

What provision of S. 1001 embodies this principle?

What if that DOD regulation is inconsistent with an OFPP policy or regulation?

Couldn't OFPP rescind the DOD regulation, with the concurrence of the Director of OMB?

Mr. FETTIG. I think it's first important to distinguish between "procurement regulation," as the question was posed, and individual procurement decisions on requirements, program priorities, weapon or contractor selections. Since many of the hypothetical complaints of DOD referred to generalized "interference in the day to day business of the Department," it's important to note that the restrictions against OFPP authority over such matters remains intact from the very first OFPP authorization which I was pleased to staff for you when I served as Staff Director of the Subcommittee on Federal Spending Practices under Chairman Chiles.

That protection, of course, would remain.

As for broadly applicable procurement regulations—not pertaining to just one or several contracts, but to the way the Department does business—several distinct situations can develop—as they did during my tenure.

First, there can arise a unique DOD need for regulatory adjustments, either identified only by DOD or imposed only on DOD by legislative or executive action. In these cases, there would be little if any spillover on the practices of other agencies. When that happens, there would seem to be little reason for OFPP or the Director of OMB to interfere with the promulgation of DOD regulatory supplements.

Could they, theoretically? Yes, but why would a Director of OMB seek to interfere with a purely indigenous DOD matter? And if he or she did, and the issue was important enough, the matter could always be raised as a Cabinet-level difference for reconciliation. In no circumstance is there any opportunity for unilateral imposition of regulation without the exercise of preeminent DoD objections.

I might also point out that in such cases where DOD takes the lead to develop regulatory coverage which might benefit the practices of other agencies, I would expect future OFPP Administrators to uniformly promulgate those practices for government-wide attention through the FAR, as I did during my tenure. If one agency, especially DOD with its enormous pool of procurement expertise, sets about to provide an improved regulation for conducting their acquisition business, odds are that other agencies would benefit from that thinking and practice as well. Tightened regulatory controls on lobbying expense might be a good example. DOD first felt the pressure to tackle this problem. Their efforts, although motivated purely by DOD needs, would likely benefit government-wide practices and uniformity can be maintained.

In the more difficult cases where a desired DoD regulation "is inconsistent with an OFPP policy of regulation," that eventuality will arise due to government-wide concerns, especially in the socio-economic area of preference programs, set-asides, labor standards and the like. A number of such prickly differences arose during my tenure—not because of some OFPP preferences but because the issues truly transcend the Pentagon and do have government-wide ramifications.

These situations are no different than other government-wide problems from budget priorities to paperwork controls: There has to be a balancing of affected interests for the government-wide good. Inevitably, there will be higher level forums for reconciling these matters, either haphazardly within the Executive Office staff—or, in the case of procurement with an OFPP, methodically through a duly organized forum.

Such cases also arose during my tenure on issues both raised by DoD and by others. DoD requested a review of Labor Department assertions that labor standards newly pertained to certain overhaul contracts. The matter was resolved jointly with OFPP, DoD, agency and Presidential advisors. Likewise with the President's anti-inflation program and new laws passed by Congress to buttress small and disadvantaged business programs. OFPP served the vital role of balancing these competing interests.

Clearly, S. 1001 does not permit a unilateral regulatory posture for DoD. DoD is not an independent government. The crucial issue is whether a strongly empowered OFPP can benefit government-wide management by acting as a recognized forum for resolving these increasingly difficult and debilitating management issues which surround Federal contracting. The answer you and the other members of the Senate gave in 1974 and again in 1979 was, "Yes." As for DoD's interests being fairly protected, the ability to confer with the OMB Director and, if necessary, appeal to higher level Executive Branch forums has been and will continue to be effective.

[Whereupon, at 12:30 p.m., the committee adjourned, subject to the call of the Chair.]

APPENDIX A

[The information submitted by Senator William S. Cohen follows:]

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

September 30, 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

I am writing to express our support for the continued authorization of the Office of Federal Procurement Policy.

We at the General Accounting Office have made many reviews of the Government's procurement activities and have worked closely with OFPP since it was established. From our experience and perspective, we feel that OFPP has made significant progress in improving the Government's procurement processes. It would be unfortunate for the Office to expire just when its efforts hold considerable promise for yet further improvements.

I know you have been supportive of the OFPP and I hope you will continue to lend this strong support to the continued authorization of the OFPP. Letters similar to this have been provided to other interested Members of Congress.

Sincerely,

Charles A. Bowsher

Charles A. Bowsher
Comptroller General
of the United States

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

PLRD/GP-182

MAY 6 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight of
  Government Management
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

Your letter of April 15, 1983, asked us to answer several questions about reauthorization of the Office of Federal Procurement Policy (OFPP). In the enclosure we address each of your questions.

As requested, we have furnished to your Subcommittee a draft of our report entitled, "Progress of Federal Procurement Reform Under Executive Order 12352." The limited response by the Federal agencies to the order so far reinforces the need for more legislative backing of procurement reform. We believe, therefore, that OFPP's evolving role of procurement system leadership and assistance should be formally recognized in statute. Formalizing this role could include authority to prescribe criteria which individual agency systems must meet to be considered acceptable. Such criteria would cover the essential elements of a procurement system--the procurement process, work force development, the use of competition, and management controls over the procurement system. The system criteria and any desired performance characteristics would be developed with full agency participation.

Our suggestion is very close to the Administration's proposal last year for a Uniform Federal Procurement System. The difference is that OFPP would have the authority to prescribe such criteria rather than simply be a coordinating body.

We will be glad to furnish any additional information you may need in this matter.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

Enclosure

QUESTIONS AND ANSWERS ON REAUTHORIZATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY

(1) Should OFPP be reauthorized? If so, for how many years? Should OFPP be a permanent office?

Yes, OFPP should be reauthorized. OFPP has embarked on a long-term development and implementation program as a result of Executive Order 12352 to upgrade agency procurement and management systems. The current efforts under the program will extend well beyond the sunset date for OFPP (September 30, 1983) and implementation will take years before reforms begin to take effect. Agencies need to understand that the Congress supports procurement reform and is serious about this long-term effort. GAO agrees with the 5-year extension proposed in Senate Bill S.1001. A shorter period of 3 years, for example, would put OFPP in a defensive position in dealing with the agencies and would divert time and attention away from its principal objective of attaining the needed procurement reforms. At the end of the 5-years, the Congress should evaluate the progress of procurement reform implementation and decide whether OFPP should be permanent.

(2) OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures, and forms relating to procurement. (Public Law 93-400). As a result of the 1979 amendments to the OFPP Act, OFPP's directive authority was subsequently restricted to issuing policy directives, while the Director of the Office of Management and Budget was authorized to rescind any rule or regulation which was inconsistent with the policies issued by OFPP (Public Law 96-83).

With the reauthorization of OFPP before the Congress, the extent of its authority is again an issue.

(A) Should OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

OFPP's present authority is insufficient if it is to have a leadership role in the Federal procurement reform effort. Executive Order 12352 placed OFPP in a leadership role, but it has not performed in such a capacity. OFPP's role is more of a catalyst and guide rather than of a decisionmaker. Decisions and conflict resolution are done elsewhere. Examples are the several procurement issues that were elevated to the Cabinet Council on Management and Administration and the use of the Paperwork Reduction Act authority to resolve the Federal Acquisition Regulation (FAR) implementation issues.

This is to be expected since the wording in the Executive order did not establish a strong implementing mechanism and OFPP's legislative authority is so weak the lack of authority raises serious questions about the results that can be achieved by the Executive order. Our review of progress under the order found a real need for a decisionmaker to facilitate reform. There are 45 independent agencies and 4 regulatory authorities working towards the goal of procurement reform. Conflicts are bound to arise. Such conflicts are not always of sufficient importance to go to the Cabinet Council on Management and Administration, but they must be resolved nevertheless if progress is to be made.

(B) Should OFPP have regulatory authority, as orginally provided in the OFPP Act of 1974? If so, what specific role should OFPP serve in issuing regulations?

The extent of regulatory authority should vary with the amount of control needed to effectively operate the Federal procurement system. At the moment, there is a need for leadership in the development and maintenance of the new FAR. The present Memorandum of Agreement between the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration does not provide for an overall decisionmaker. After FAR takes effect, maintenance will be a problem because the regulatory councils--civil and defense--are independent. Although these councils can appeal disputes to an FAR council, it is clear from an August 1982 agreement reached between the regulatory agencies that the FAR council "will not have directive authority." We hope this clarifies the situation because during the Subcommittee's recent hearing the Administration's testimony was confusing on this point. Issues can be elevated to respective agency heads for resolution. However, this could result in a proliferation of supplemental procurement regulations which are individually maintained. To assure the regulatory process can support a FAR system, OFPP should have authority over developing and maintaining as well as supplementing regulations.

(C) Should OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving

> the waiver of statutory small purchase procedures and socio-economic thresholds, under case-by-case supervision from the Director of the Office of Management and Budget and the Congress?

GAO believes that OFPP should be given authority to develop innovative procurement concepts and methods which can be tested by selected agencies under controlled conditions with advance notice to the Congress. This authority is much broader than that posed by the question and is not limited to just small purchase procedures and socio-economic thresholds. For example, it could include the use of abbreviated and simplified procedures and contracts to purchase commercial products and services or any other innovation to increase competition. This testing will provide the executive branch and the Congress with the data it needs to make informed decisions on changes in procurement statutes.

(D) Are there other authorities which you feel OFPP should have?

In addition to the added authority already noted--overseeing Government-wide regulations--OFPP should have its evolving role of procurement system leadership and assistance recognized in statute and be given the authority to prescribe acceptable Government-wide criteria and standards for procurement system performance. As part of Executive Order 12352, an interagency task group was established to develop procurement system performance criteria. Once criteria is available, executive agencies are to adapt this criteria to their operations and specify a level of performance. Examples of these in the area of competition can be found in the Administration's proposal for a Uniform Federal Procurement System, page 31. By setting criteria and performance standards, OFPP can insure that improvements are made.

> (3) Should the Congress codify agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982? Should the directive to obtain more effective competition be expanded?

Prescribing agency management responsibilities for procurement systems in legislation will add weight to the Executive order and improve Federal agencies' response. Important elements of the order are (1) the establishment of clear lines of contracting authority and accountability, (2) designation of a procurement executive responsible for managing each agency's system, (3) development of a professional work force, and (4) establishment of a program for increasing competition. The need for these elements was recognized by the Commission on Government Procurement in the early 1970's and they are key features of OFPP's proposed Uniform Procurement System. GAO supports the reforms noted in the order and believes that their inclusion in OFPP's reauthorization would eliminate uncertainty in agency relationships with OFPP and facilitate procurement reform.

For example, agencies with significant procurement activities have recently designated their procurement executives, which is in compliance with the order. However, most agencies have failed to clearly define this executive's new responsibilities or provide the authority to do the job. In addition, procurement executives have not redelegated certain responsibilities down to the operating level, where the changes must be made to be effective. A statement of the requirement in statutory terms would provide additional impetus for agency action.

Because the Executive order is so brief on the matter of competition, we believe it would be useful to expand statutory management responsibilities in this area. We have so testified before the House Committee on Government Operations, citing such examples as procurement planning, market research, limiting the circumstances permitting sole-source procurement, and assigning overall agency responsibility for removing barriers to competition. Your Subcommittee has been provided copies of our testimony to the House, as well as some bill language to accomplish this aim.

(4) Has OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

Despite the many obstacles facing OFPP, it has been effective in developing a new procurement system concept and in getting some executive branch support. Executive Order 12352 marks the first time a President has intervened directly to support the reform movement started by the Congress in the early 1970s. However, it is difficult to fully measure OFPP's effectiveness until more data is available on the success of the current reforms.

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

HILTON DAVIS
VICE PRESIDENT
LEGISLATIVE AND POLITICAL AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
202/463-5600

October 3, 1983

The Honorable William S. Cohen, Chairman
Subcommittee on Oversight of Government
Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the U.S. Chamber, which is composed of more than 207,000 members, I am writing to express support for S. 1001, "Office of Federal Procurement Policy Act Amendments of 1983." This legislation would reauthorize, for five years, the Office of Federal Procurement Policy (OFPP), which has played a vital role in improving procurement. Further, it has served as a single contact point for the business community on procurement issues within the Executive branch.

The Chamber is the largest federation of business and professional organizations in the world, and is the principal spokesman for the American business community. More than 90 percent of the Chamber's members are small business firms having fewer than 100 employees. Yet, virtually all the nation's largest industrial and business concerns are also members. We are particularly cognizant of the problems of small businesses, as well as issues facing the entire business community.

We strongly endorse reinstating the regulatory authority of OFPP as provided in section 5 of S. 1001. This would enhance OFPP's ability to lead the various government agencies in developing procurement policy.

In 1969, Congress created the Commission on Government Procurement to study all aspects of procurement by the federal government, and to make recommendations for increasing economy, effectiveness and efficiency in the procurement of goods and services. This Commission submitted its final report in 1972, recommending that an Office of Federal Procurement Policy be established to provide uniform direction for procurement by all federal agencies. In response to this recommendation, Congress passed the Office of Federal Procurement Policy Act (P.L. 93-400) in 1974, establishing OFPP in the

Office of Management and Budget. OFPP was reauthorized for four years in 1979 and has continued to seek improvements in the federal procurement process.

OFPP has served as a focal point for the development of procurement policy, and as the motivating force for development of a uniform Federal Acquisition Regulation (FAR), issued recently. FAR will provide, for the first time, a uniform system of procurement regulations for all agencies, which will be supplemented only with essential additional agency provisions. It is, therefore, particularly imperative that OFPP be reauthorized and that its regulatory authority be restored.

Thank you for your consideration of our views.

Cordially,

Hilton Davis

Hilton Davis

American Bar Association

GOVERNMENTAL AFFAIRS GROUP
DIRECTOR
Robert D. Evans
STAFF DIRECTOR FOR GOVERNMENTAL LIAISON
Craig H. Baab
STAFF DIRECTOR FOR BAR LIAISON
Kevin J. Driscoll
STAFF DIRECTOR FOR MEMBER LIAISON
Irene R. Emsellem
LEGISLATIVE COORDINATORS
Lillian B. Gaskin
Denise A. Cardman
STAFF DIRECTOR FOR INFORMATION SERVICES
Peggy A. Richter
EDITOR, WASHINGTON LETTER
Dean R. Owen

October 4, 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the American Bar Association, I am writing to express strong support for S.1001, legislation to extend the Office of Federal Procurement Policy (OFPP) for an additional 5 years.

S.1001 restores to the OFPP essential statutory functions in the establishment of policies, regulations, procedures, and forms that conform to and enhance good procurement practices by all agencies of the Executive Branch. We believe the restoration of OFPP's regulatory authority is an important step in the continuing efforts to improve the federal procurement process.

The ABA endorsed the establishment of OFPP by Congress in 1974. We testified earlier this year in support of S.1001, as did the General Accounting Office and most witnesses representing organizations that do contract business with the government. ABA believes the OFPP is a valuable and needed asset in the continuing effort to reform and improve the federal procurement process.

We are hopeful that after extensive hearings by the Oversight of Government Management Subcommittee of the Governmental Affairs Committee, and the issuance of a favorable report by the full Committee (No. 98-214), S.1001 can be placed on the agenda for prompt Senate action. It is particularly important that the Senate act on this bill in order to assure there is a focal point for addressing procurement reforms. The House already has passed a similar bill, H.R. 2293.

GOVERNMENTAL AFFAIRS GROUP
1800 M STREET, N.W., WASHINGTON, DC 20036-5886 • WRITER'S DIRECT NUMBER: 202/331-2214

Prompt action by the Senate, and resolution of the differences between the two bills, will provide needed assurance of Congress' commitment to simplifying the federal procurement system and increasing the use of competitive procurement procedures.

Sincerely,

Robert D. Evans

Robert D. Evans

RDE:cwa

cc: Members, Committee on Governmental Affairs
Members, Committee on Armed Services

HEWLETT-PACKARD COMPANY
1501 PAGE MILL ROAD
PALO ALTO, CALIFORNIA 94304

1983 OCT 21 AM 11:08

DAVID PACKARD
CHAIRMAN OF THE BOARD

October 17, 1983

The Honorable William S. Cohen
United States Senate
Washington, D. C. 20510

Dear Senator:

I understand that your bill, S338, on "Competition in Contracting Act of 1983" is close to a final vote. As the latest version now stands, dated August 1, 1983, I can fully support the bill.

It has long been my view that competitive negotiated contracts should enjoy the same status of competitive award as formally advertised and that truly sole source non competitive contracts should be restricted.

I am also supportive of the concept of a focal point in the Office of the President for Procurement Policy, OFPP, and that this office should have some regulatory authority to ensure consistency in the implementation of policy throughout the many Federal Agencies.

Sincerely,

David Packard

David Packard

DP/lgk

CBEMA

October 5, 1983

The Honorable William S. Cohen
326 Dirksen Senate Office Building
U.S. Senate
Washington, D.C. 20510

Dear Senator Cohen:

The Computer and Business Equipment Manufacturers Association (CBEMA) would like to re-state its support for your legislation, S.1001, to reauthorize the Office of Federal Procurement Policy.

We feel that the reauthorization of OFPP is a matter of great importance to the Government's procurement process. CBEMA has for some time actively supported OFPP. In addition to responding to your letter dated April 7, 1983, we presented a statement in support of reauthorization before the Senate Subcommittee on Federal Spending Practices and Open Government on March 9, 1979, and provided detailed comments to OFPP's Proposal for a Uniform Federal Procurement System submitted by OFPP to the Congress on December 9, 1981.

In our letter to you dated April 22, 1983 we stated that we were in support of the reauthorization of OFPP for an additional five years. We arrived at that number because we firmly believe that at least five years is necessary to implement and maintain any well conceived changes to the procurement process. Additionally, we stated in our letter that we believe it is necessary that OFPP be given directive authority. We maintain that the office should be granted strong positive authority. However, you will recall that the issue of directive vs. regulatory authority was addressed and clarified by you and Senator Chiles during your hearings of April 27, 1983. During that exchange, it was decided that by the use of the term directive authority, what is essentially desired is regulatory authority. For the record, we would like to join you in strongly recommending that OFPP be granted regulatory authority.

The need for OFPP to have regulatory authority is clear. OFPP has been unable to successfully propose a single statute uniform procurement system, implement a single set of Federal Acquisition Regulations, and it was unable to maintain

Computer and Business Equipment Manufacturers Association 311 First Street, N.W., Suite 500, Washington, D.C. 20001 (202) 737-8888

fixed timeframes in revising and publishing the FARs. Because of this lack of strong authority Federal procurement management has become indecisive and fragmented. There is an obvious need for a strong procurement office which is what OFPP was intended to be.

CBEMA appreciates your efforts to improve the Federal procurement system. If we can be of any additional assistance please feel free to call upon us.

Very truly yours,

Vico E. Henriques
President

cc: The Honorable John G. Tower

VEH/gk

American Electronics Association
Government Operations Office

AEA

1612 K Street N.W.
Washington, D.C. 20006

(202) 331-8050

October 5, 1983

The Honorable William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
326 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The American Electronics Association strongly endorses S. 1001 as reported by the Senate Governmental Affairs Committee, and its House counterpart measure, H.R. 2293. In particular, AEA believes that it is essential that the Office of Federal Procurement Policy (OFPP) be given regulatory authority to implement government-wide procurement policy and to resolve inter-agency disputes.

AEA represents over 2,300 member companies nationwide, and over 450 financial, legal and accounting organizations which participate as associate members. AEA encompasses all segments of the electronics industry, including manufacturers and suppliers of computers and peripherals, semiconductors and other components, telecommunications equipment, defense systems and products, instruments, software, research, and office systems. The AEA membership includes companies of all sizes from "start-ups" to the largest companies in the industry, but the largest number (80%) are small companies employing fewer than 200 employees. Together, our members account for 63 percent of the worldwide sales of the U.S. based electronics industry.

As you are aware, President Reagan signed Executive Order 12352 on March 17, 1982 to provide a uniform, more efficient procurement system government-wide. Among the directives included in that Executive Order was a provision "to provide broad policy guidance and overall leadership" to the OFPP. Since the issuance of the Federal Acquisition Regulations (FAR), it is more important than ever that the need for such leadership and guidance be recognized. Further, it is essential that this leadership be centralized and apply to all federal agencies. In other words, OFPP already is established with the mandate to oversee government-wide procurement policy. It now needs the authority to ensure implementation of such policy.

The Department of Defense maintains that providing regulatory authority to OFPP infringes on its independence. It also maintains that it can conduct its own procurement reforms without the need for outside oversight. However, as the House Government Operations Committee notes in its report on H.R. 2293, "the Department has little to show for its efforts and has proved incapable of reforming its own procurement activities." That report goes on to state that the Council on Economic Priorities cited the Pentagon for "fail[ing] to correct the most persistent causes of cost growth: lack of competition in contract awards; contracting practices that reward cost maximization; simultaneous design and manufacture, or 'concurrency'; disorganized program management and decision-making..."

OFPP initially had regulatory authority under its original 1974 authorization. This authority was taken away, largely as a result of efforts by the Pentagon. AEA believes that OFPP's regulatory authority should be reinstated, especially since the issuance of the FAR. Without authority to ensure implementation of government-wide procurement policies and to resolve differences among government agencies, OFPP could issue all the high-minded policies it wants. But it would only be blowing smoke.

The Office of Management and Budget itself has tacitly recognized this paradox when it resorted to using the regulatory authority vested in the Office of Information and Regulatory Affairs (OIRA) in ensuring the issuance of the FAR.

In conclusion, there is no reason to believe that the nature of OFPP's activities would change if its regulatory authority were reinstated. It is and should be only capable of issuing general guidance. This is what it did from 1974 until 1979, when its regulatory authority was taken away. However, without providing OFPP with regulatory authority, there is no reason to believe that the FAR or any other government-wide procurement policy will be able to be is anything but a meaningless paper exercise.

Sincerely,

Kenneth C.O. Hagerty
Vice President
Government Operations

National Council of NCTSI Technical Service Industries

October 3, 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The National Council of Technical Service Industries (NCTSI) appreciates your efforts to improve procurement practices of the Government, and supports your bill, S.1001, on the reauthorization of the Office of Federal Procurement Policy (OFPP). The OFPP offers a forum in which the issues of Federal procurement can be addressed and a point of responsibility within the Government where procurement problems receive a knowledgeable hearing. While the performance of OFPP over the past nine years can best be described as mixed, and certainly not favorable from the viewpoint of the private sector, we need it as the sole Federal office concerned with procurement.

The regulatory authority which OFPP had during the period 1974-1979 certainly needs to be reauthorized. This requirement is emphasized by the general disreagrd Executive agencies have shown for the Office of Management and Budget (OMB) Circular A-76 requirement to prepare a detailed schedule for the review of each commercial and industrial activity and to conduct such reviews within three years. Although the Defense Department and the National Oceanic and Atmospheric Administration have conducted some reviews, no agency is even close to compliance.

You are also to be commended for your request to the Controller General to look into the progress on procurement reform under Executive Order 12352. The same general disregard has been shown for this Order as for OMB Circular A-76. While regulatory authority for OFPP theoretically may not be needed to insure implementation of OMB Circular A-76 and E. O. 12352, the record of compliance to date suggests such authority is needed.

Overseeing the procurement of commercial goods and services is a Governmental function which requires great skill and managerial ability. The proposed Federal Procurement System and revised Federal Acquisition Regulations require the OFPP for successful implementation.

Your bill, S.1001, is needed. We support you and wish you success in getting it passed.

Sincerely,

George A. Daoust, Jr.
Executive Director

CORPORATIONS CURRENTLY MEMBERS

OF

THE NATIONAL COUNCIL OF

TECHNICAL SERVICE INDUSTRIES

ARA SERVICES, INC.

BOEING COMPUTER SERVICES COMPANY

BOEING SERVICES INTERNATIONAL, INC.

BURNS & ROE SERVICES CORPORATION

CALCULON CORPORATION

CERBERONICS, INC.
CHEMFIX TECHNOLOGIES, INC,

COMPUTER SCIENCES CORPORATION

COMSIS CORPORATION

CONTROL DATA CORPORATION

FEDERAL ELECTRIC CORPORATION
A Subsidiary of International Telephone and Telegraph Corporation

HUGHES AIRCRAFT COMPANY

KENTRON INTERNATIONAL, INC.

LEAR SIEGLER, INC.

LOCKHEED CORPORATION

NORTHROP SERVICES, INC.

NORTHROP WORLDWIDE SERVICES, INC.

RAYTHEON SERVICE COMPANY
A Subsidiary of Raytheon Corporation

RCA SERVICE COMPANY
A Division of RCA

RURAL METRO FIRE, INC.

UNITED INFORMATION SERVICES, INC.
VINNELL CORPORATION

August, 1983

The International
Communications
Industries Association 3150 Spring St., Fairfax, VA 22031 703/273-7200

October 4, 1983

Honorable William S. Cohen
Committee on Governmental Affairs
Subcommittee on Oversight of Government
Management, Chairman
530 Senate Hart Office Building
2nd Street and Constitution Avenue, N.E.
Washington, D.C. 20510

ATTN: Jeff Minsky
SD 346

Dear Chairman Cohen:

On behalf of the International Communications Industries Association, I am pleased to convey to the Senat our support for S. 1001 as reported (Senate Report 98 214, September 1, 1983).

We have dealt with the Office of Federal Procurement Policy since it was created and we continue to feel the the OFPP serves a useful public purpose and should not be abolished or diminished in any way.

As the National Aduio-Visual Association, we supported the creation of OFPP in the early 1970's. It was our view at that time that General Services Administration and the Department of Defense operated far too independently making it difficult for companies selling identical products and services through two different procurement systems. While progress has been made by OFPP, there still remains much to be done.

Prior to OFPP, there was no point in the Executive Branch beyond those two agencies where outside organizations such as ours could bring issues to a focus and find resolution of public policy problems. Usually, we were forced to take our problems to Congress.

It is difficult to imagine the Office of Management and Budget containing the word "Management" in its title without clear regulatory authority in the multi-billion dollar procurement policy area. S. 1001, as reported, provides the correct measure of regulation and management authority for OFPP.

Therefore, we strongly recommend that the Senate adopt S. 1001. We feel confident that in doing so the Senate will be assuring itself that most procurement policy differences among agencies are ironed out before these problems are referred to Congress.

We appreciate your leadership on S. 1001 and we look forward to seeing this bill, with regulatory authority for OFPP, passed by the Senate in the near future.

Warmest regards.

Sincerely,
Kenton
Kenton Pattie
Senior Staff Vice President

PROFESSIONAL SERVICES COUNCIL

International Square
Suite 300
1825 Eye Street, NW
Washington, DC 20006
(202) 223-3835

Leadership, Advocacy and Support for the Nation's Professional Services Industry

R. Michael McCullough
President
Virginia Littlejohn
Executive Director

To: Members of the U.S. Senate

From: Virginia Littlejohn, Executive Director

Subject: Reauthorization of the Office of Federal Procurement Policy (OFPP)

Date: October 3, 1983

The Professional Services Council is a trade association of professional and technical services firms and associations, representing small and large businesses, with a common interest in improving the Federal government's methods of procuring professional services.

PSC strongly endorses S. 1001, reauthorizing the Office of Federal Procurement Policy (OFPP), as well as reinstating its regulatory authority as provided in Section V of S. 1001.

A meaningful OFPP will serve as a focal point for the development of procurement policy and play a vital role in simplifying and improving federal procurement policy.

We urge your support and assistance on the reauthorization of OFPP. Thank you.

OCT 1983

N A
P M

NATIONAL ASSOCIATION OF PHOTOGRAPHIC MANUFACTURERS, INC.

600 Mamaroneck Avenue, Harrison, New York 10528
Telephone 914 - 698-7603

October 5, 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
326 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Cohen:

The National Association of Photographic Manufactures (NAPM) is a voluntary association composed of companies engaged in manufacturing photographic products. Membership in the Association is open to both domestic and nondomestic manufacturers. Shipments by domestic NAPM member companies account for over 90 percent of all photographic products manufactured in this country on a dollar basis and represents a broad cross section of the products of the photographic industry.

While the majority of photographic products are sold into the private sector, a large number of agencies of the Federal government purchase a wide variety of photographic equipment, sensitized materials and chemicals that are manufactured by our member companies. It is because of this government procurement activity that we are writing you in support of S.1001, which, if enacted, would reauthorize the Office of Federal Procurement Policy (OFPP).

Our support for this legislation which you sponsored is based upon several factors, not the least of which is an assessment of the past performance of OFPP in providing overall direction of procurement policies and procedures by government agencies. It is our opinion that, in this regard, OFPP has proven its value many times over in eliminating confusion and reducing variations between agencies to the mutual benefit of the government and private industry.

With the current emphasis on maximizing the return on government spending and with government procurement activity measured in billions of dollars, it appears to us that the reauthorization of OFPP would well prove to be an investment worth many times its relatively small budget.

The Association for Manufacturers of Image Technology Products

We also believe that it only makes good sense that there be an independent group within the Office of Management and Budget with a charter directed at coordinating and improving the economy, efficiency and effectiveness of the procurement processes by providing this overall direction in the form of policies and regulations to the various agencies as they establish their procurement policies. In this regard, we believe it is important that OFPP have regulatory authority as was the case prior to 1979.

We strongly support your efforts and appreciate the opportunity to express our views in that regard. We would be pleased to elaborate should you deem it desirable.

Sincerely,

Joseph T. Morris

Joseph T. Morris
Executive Vice President

JTM/js

COFPAES
COMMITTEE ON
FEDERAL PROCUREMENT OF
ARCHITECTURAL / ENGINEERING
SERVICES

American Congress on Surveying & Mapping
American Consulting Engineers Council
American Institute of Architects
American Society of Civil Engineers
ARTBA Planning & Design Division
National Society of Professional Engineers

1983 OCT 21

October 20, 1983

The Honorable William S. Cohen
United States Senate
Washington, DC 20510

Re: S. 1001, Office of Federal Procurement Policy Reauthorization

Dear Senator Cohen:

The Committee on Federal Procurement of Architectural and Engineering Services, representing the views of practicing architects, engineers and surveyors, favors reauthorization of the Office of Federal Procurement Policy.

OFPP provides a central point of contact and authority on procurement issues. While we have not always agreed with OFPP, our concerns have received prompt and considered attention. We think OFPP should be continued and urge you to support S. 1001.

Sincerely yours,

Bill Ratliff

William R. Ratliff
Chairman

WRR:bc

Please reply to: 475 L'Enfant Plaza, S.W.
Suite 2450
Washington, D.C. 20024

OCT [illegible] 1983

Washington Knowledge Network

1200 Quince Orchard Boulevard
Gaithersburg, MD 20878
301 921 8700

October 6, 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
SD-346
Washington, D.C. 20510

Dear Senator Cohen:

On behalf of the Information Industry Association I wish to express to you our full-fledged support for reauthorizing the Office of Federal Procurement Policy (S. 1001).

We feel strongly that in view of the billions of dollars in federal procurement that there needs to be an operational overseer of federal government procurement activities to ensure an effective and consistent application of government procurement regulations across all federal agencies.

We applaud and appreciate your continuing efforts in this area, and we commend your dedication and service to the American people.

Sincerely,

Melvin S. Day
President

Association for Information and Image Management

1100 Wayne Avenue
Silver Spring, Maryland 20910
301/587-8202

October 5, 1983

The Honorable William S. Cohen, Chairman
Subcommittee on Oversight of Government Management
Senate Committee on Governmental Affairs
SD-326, Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Cohen:

The Association for Information and Image Management (AIIM) wishes to commend you on your activities regarding S. 1001, the Office of Federal Procurement Policy reauthorization bill. AIIM, representing 250 companies and over 9,000 individuals in the image and information management industry, is in full support of your efforts to restore OFPP to its status as an independent voice in the federal procurement system. A strong OFPP with regulatory authority is a must if federal procurement is to become more competitive, equitable and cost effective.

AIIM stands ready to assist you in whatever way we can so that a strong, effective OFPP can become a reality.

Sincerely,

Kenneth G. Munro

Kenneth G. Munro
Government Affairs Representative

KGM/sl

SAMA
1101 16TH STREET, N.W. WASHINGTON, D.C. 20036 (202) 223-1360

October 7, 1983

The Honorable William S. Cohen
326 Dirksen Senate Office Building
U.S. Senate
Washington, DC 20510

Dear Senator Cohen:

The Scientific Apparatus Makers Association (SAMA) would like to re-state its support for your legislation, S. 1001, to reauthorize the Office of Federal Procurement Policy (OFPP).

We feel that the reauthorization of OFPP is a matter of great importance to the Government's procurement process. As you may recall, SAMA has for some time actively supported OFPP. In response to your letter dated April 7, 1983, we supported reauthorization of OFPP for an additional five years and stated that we believe it is necessary that OFPP be given regulatory authority. We continue to strongly support this position.

The need for OFPP to have regulatory authority is clear. OFPP has been unable to successfully propose a single statute uniform procurement system, implement a single set of Federal Acquisition Regulations. and it was unable to maintain fixed timeframes in revising and publishing the FARs. Because of this lack of strong authority, Federal procurement management has become indecisive and fragmented. There is an obvious need for a strong procurement office which is what OFPP was intended to be.

SAMA appreciates your efforts to improve the Federal procurement system. If we can be of any additional assistance, please feel free to call upon us.

Very truly yours,

Eben S. Tisdale
Eben S. Tisdale
Director of Public Affairs

EST/dr

BIFMA

The Business and Institutional Furniture Manufacturer's Association
2335 Burton S.E.
Grand Rapids, Michigan 49506
616 243-1681

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1983 OCT 11 PM 3 16

October 5, 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
SD-346
Washington, DC 20510

SUBJECT: S.1001

Dear Senator Cohen:

We are writing to you today to express support for your effort to continue the Office of Federal Procurement Policy. We feel that the value of the OFPP in overseeing and reviewing the procurement process is a particularly important function. Our industry is concerned that without the OFPP, the system of checks and balances regarding procurement process would be eliminated. We support S.1001 and trust that you will find success in your effort.

Yours truly,

Stephen D. Channer
Executive Director

SDC:kd

REF: 0443A

fed a FOR THE PROFESSIONAL

FOODSERVICE EQUIPMENT DISTRIBUTORS ASSOCIATION
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SMC

April 26, 1983

The Honorable William S. Cohen
United States Senate
530 Senate Hart Building
Washington, D.C. 20510

APR 29 '83

You recently received a letter, Senator Cohen.....

from John Fitch of the National Association of Wholesaler/Distributors in response to specific questions you asked regarding the views of NAW/D on legislation to reauthorize the Office of Federal Procurement Policy for five years.

The answers of this 300 member national association of distributor/dealers of foodservice equipment and supplies to your questions are the same as Mr. Fitch's and I will not duplicate them.

I would, however, like to bring to your attention a problem that was created about two years ago when the military services discontinued local purchases of their foodservice equipment requirements and assigned it to the General Services Administration, Richmond, VA.

It is my understanding that this was contrary to the directive of the Office of Federal Procurement's policy. To the best of my knowledge there was no rational reason given when the change was made that would justify withdrawing procurement of foodservice equipment from local sources, including the design and installation of foodservice facilities.

With the 300 members of this association plus an added 150 or more non-members, equipment, supplies and services are available for any government installation in the country at competitive prices and a readily available source for follow up service when needed.

Senator Cohen, we appreciate your interest in asking for comments on this ussue and if further information is needed we will be pleased to help in any way we can.

Sincerely,

William Englehaupt
Executive Director
WE/jm

cc: J. Fitch, National
Assoc. Wholesaler/
Distributors

May 2, 1983

The Honorable William S. Cohen
Chairman
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The American Subcontractors Association (ASA) is a national trade association with nearly 5,000 members and 49 chapters nationwide. ASA is the only national trade association that solely represents the concerns and interests of all construction subcontractors, regardless of trade specialty. According to the latest government census, subcontractors perform over 80 percent of the commercial/industrial construction in the United States. ASA's primary mission is to improve business conditions for its members through education and cooperative action.

Many ASA members perform construction for the federal government. Sometimes they serve as prime contractors, contracting directly with the federal government. More often, they serve as subcontractors, dealing with the government only through the prime contractor. In both situations, the procurement practices of the federal government have a direct impact on these construction contractors.

Thus, ASA has a strong interest in the Office of Federal Procurement Policy - whether it will continue to exist and what will be its authority and power.

ASA supports the reauthorization of OFPP. We believe the Office has played an important role in the procurement process by serving as a focal point for all interested parties.

That is not enough, however. The effective management of the procurement process requires a high degree of direction and control. ASA believes that, to be effective, OFPP must operate on a plane above the procurement agencies and have regulatory authority rather than merely directive or advisory authority.

Therefore, ASA strongly recommends that Congress reinstate regulatory authority for OFPP.

AMERICAN SUBCONTRACTORS ASSOCIATION 8401 CORPORATE DRIVE, SUITE 540, LANDOVER, MD 20785
(301) 459-8494

There are numerous examples of problems and delays created because OFPP does not have the stature or authority needed to develop and enforce policy. A recent example involves OFPP's proposed policy letter on retainage (47 Fed. Reg. 51643 (1982)).

The Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255) allows federal agencies great latitude in establishing policy on the terms of payment on federal construction projects. Traditionally, agencies have adopted the practice of withholding a percentage of the progress payments agreed upon for work even though it may have been properly performed. Generally, a portion of each progress payment, sometimes as much as ten percent, is withheld until the entire job is completed and accepted. Thus, as the contractor completes 100 percent of each segment of the contract, he receives only 90 percent of the agreed price for such completion. The retained monies may be held for months, or even years, even though the contractor's work has been completed and accepted by the agency. Retainage substantially reduces the operating and expansion capital of contractors.

Current government agency practices cover a wide range. The General Services Administration usually withholds a full ten percent retainage. On the other hand, the Department of Defense does not use retainage as a routine administrative practice for "construction projects which are on or ahead of schedule and otherwise substantially in compliance with contract requirements."

Last year, the Senate approved legislation that required that progress payments "be made in full to the contractor without retention of any of the progress payment due, unless the contracting officer finds and determines that the contractor has failed to make satisfactory progress toward the timely completion of the contract in conformity with its terms and conditions."

Apparently in response to this legislation, OFPP's proposed policy letter was issued in November 1982. Public comments were due on the proposal on or before December 30, 1982.

During the four months since that time, the proposed policy letter has been debated within the Office of Management and Budget (OMB) by OFPP and the Management Division. The basis of the debate seems to be whether retainage is a procurement issue under the jurisdiction of OFPP or a cash-flow issue under the jurisdiction of the Financial Management Division.

ASA believes retainage is clearly a procurement issue. Nonetheless, while the dispute continues, the issue remains unresolved and the interested parties - contractors, agencies, and the Congress - are in limbo.

ASA believes this kind of problem and delay could be resolved if OFPP had the authority and stature necessary to provide true management and strong leadership on procurement issues with the procuring agencies and within OMB.

In summary, Mr. Chairman, ASA urges the Congress to reauthorize OFPP. At the same time, however, ASA urges the Congress to reinstate regulatory authority for the Office.

Mr. Chairman, I request that this letter be made a part of the record of hearings concerning the reauthorization of the Office of Federal Procurement Policy.

Respectfully submitted,

Robert B. Johnson

Robert B. Johnson
President

MACHINERY and ALLIED PRODUCTS INSTITUTE
1200 EIGHTEENTH STREET, N.W. WASHINGTON, D.C. 20036 202-331-8430

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Hewlett-Packard Company, Palo Alto, California

May 10, 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

MAY 1[illegible] '83

Dear Mr. Chairman:

Extending the Office of Federal Procurement Policy

In connection with the Subcommittee's hearings and consideration of your bill S. 1001, and the current "sunset" review of the Office of Federal Procurement Policy (OFPP), we offer the views of the Machinery and Allied Products Institute (MAPI). As you may know, the Institute represents the capital goods and allied product industries of the United States. Although the bulk of the companies in these industries sell primarily to the commercial rather than to the government market, many furnish products which are essential to the government, particularly in the national defense area. And these corporations have a deep interest in the procurement policies and regulations that are used by the federal government in connection with its purchases from private industry. The "sunset review" of OFPP is occasioned by the Office of Federal Procurement Policy Act, as amended, Section 11 of which currently authorizes OFPP appropriations only through the fiscal year ending next September 30.

As to the issues currently before the Subcommittee, MAPI strongly supports the continuance of OFPP. We concur with the Administration's recommendation that the extension be for five years rather than for the three-year term included in H.R. 2293 recently approved by the House Government Operations Committee. On the other hand, we strongly disagree with the Administration's recommendation that regulatory authority, which was taken away from OFPP under the terms of the 1979 OFPP-extension legislation (Public Law 96-83), not be regranted to OFPP at this point. We agree with the House Government Operations Committee, the Comptroller General, and we believe virtually all of the nongovernment commentators on this point—OFPP should now be extended the regulatory authority which it had under the original OFPP statute enacted back in 1974. Finally, we urge that greater attention be given to according OFPP its proper role as the lead Executive branch agency in the formulation of procurement policies.

MACHINERY & ALLIED PRODUCTS INSTITUTE AND ITS AFFILIATED ORGANIZATION, COUNCIL FOR TECHNOLOGICAL ADVANCEMENT, ARE ENGAGED IN RESEARCH IN THE ECONOMICS OF CAPITAL GOODS (THE FACILITIES OF PRODUCTION, DISTRIBUTION, TRANSPORTATION, COMMUNICATION AND COMMERCE) IN ADVANCING THE TECHNOLOGY AND FURTHERING THE ECONOMIC PROGRESS OF THE UNITED STATES

The OFPP Extension Issue

In our view, OFPP under its current Administrator, Donald E. Sowle, and his predecessors, Karen Hastie Williams, Lester Fettig, and Hugh Witt, has made a very substantial contribution to the improvement of the federal government's procurement policies generally.

We do not necessarily endorse all of the specific actions taken by OFPP in its nearly nine years of existence. We do think, however, that there have been a number of significant accomplishments in the past, and that the following major projects currently underway with respect to procurement policy more than justify the continued existence of OFPP:

1. The effort to achieve significant revision in the basic federal procurement statutes, such as that embodied in S. 338, the proposed "Competition in Contracting Act," introduced by the Chairman.

2. The program outlined by Administrator Sowle to implement Executive Order 12352, President Reagan's administrative program for procurement reform.

3. The effort to develop the Federal Acquisition Regulation (FAR), the uniform government-wide procurement regulation, which project finally now seems to be nearing completion.

In addition, of course, Mr. Sowle, in his testimony to the Subcommittee, has indicated a number of other important procurement areas in which major OFPP policy letters and similar or related materials are currently in preparation.

As to the length of the OFPP extension, we think that a period of five years is preferable to the three years approved by the House Government Operations Committee. There are a number of important tasks remaining to be performed by OFPP, including particularly its review of and response to recommendations for further reform in the procurement area which have been made by industry and other interested parties from outside the government./1 As we see it, work on these recommendations is likely to take a considerable period of time, and it would seem that a five-year extension would be far more suitable than three years for the accomplishment of that purpose.

Further, and this is a point which we recognize has been made by others, a longer term extension would be more likely to facilitate the acquisition and retention of appropriate professional staff by OFPP, because of the at least implied greater job security that would be inherent in the longer term extension. Indeed, although a term-of-years extension probably is preferable at this point, we conceive the strong possibility that by 1988, when an additional five-year term will have expired, it may be appropriate to give serious consideration to making OFPP a permanent organization within the federal government.

1/ See the 85 problems and issues of concern to the procurement community, which are listed in Appendix C of the Proposal for a Uniform Federal Procurement System submitted to Congress on February 26, 1982.

Restoration of OFPP Regulatory Authority

We note that in his testimony to the Subcommittee, OMB Deputy Director Wright has urged that, although OFPP should be granted directive authority, it should not be given the regulatory authority which was taken away under the terms of the 1979 OFPP extension. The basic reason, as stated by Mr. Wright, for the Administration's position on this matter is that "regulatory authority could create unnecessary tension between OFPP and the regulatory agencies (especially DOD, GSA, and NASA)." First, as has been indicated by a number of witnesses to the Subcommittee, particularly Lester Fettig, one of the former OFPP Administrators, there is very little if anything on the record to indicate that OFPP exercise of regulatory authority during the 1974-79 period (when it possessed such authority) created any significant problems in the relationships between OFPP, on the one hand, and the departments or agencies with major procurement responsibilities, on the other hand. Presumably Mr. Wright is reflecting fears expressed by these agencies to OMB as to what might happen in the future. Frankly on the basis of its record to date, we find it difficult to believe that anyone would seriously be concerned that OFPP would be likely to "overuse" any such regulatory authority. At the same time, however, in our view it perhaps might be desirable to cause some of these departments and agencies some "tension" or at least concern that their resistance to reform in certain areas might eventually be challenged by OFPP.

To illustrate the point, the Institute has long been concerned with a matter that has been brought to the attention of the Governmental Afffairs Subcommittee on Federal Spending Practices and Open Government in the past—the resistance of the Defense Department to reform in the procedures which are used to solicit comments and recommendations of interested nongovernment groups on proposed policies and rules. Indeed, as you know, the OFPP statute (41 U.S.C. 405(d)(3)) requires the Administrator to establish "criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms."

We believe, along with other observers both inside and outside government, that such participation can be effective only when (1) sought before the policy or rule has been finally decided upon and is still under consideration, (2) the background and reasons for the policy or rule are disclosed, and (3) sufficient time is extended to outside groups to furnish such comments. These conditions to the effectiveness of outside group participation appear to be generally recognized in pertinent provisions (e.g., Section 1.501) of the draft FAR. But the Defense Department (DOD) in the administration of its Defense Acquisition Regulation (DAR) does not appear to follow the first and second conditions we have noted. Indeed, the Institute, which is normally requested to furnish comments on proposed DAR revisions, has repeatedly called to DOD's attention that DAR proposals are invariably submitted for comment without a statement of the background of and reasons for the change. Although DOD officials have indicated to us in the past that they understand the problem and intend to take some corrective action, we have been unable to detect any improvements thus far despite these reassurances. Indeed the lack of DOD action on this point leads us to conclude that DOD is likely to resist the implementation of the above-cited draft FAR provision when it becomes effective.

As we have noted, this is but a single example of an issue concerning which there is some reason to suspect that DOD—and perhaps equally GSA and NASA—are likely to disagree with approaches taken by OFPP. Under these circumstances, we view with much concern the current plans, as we understand them, that, after the FAR is published in final form, the administration of FAR will be handled jointly by DOD, NASA and GSA, without apparently any more than an advisory role for OFPP. Clearly this is an area where OFPP needs regulatory authority to ensure agency conformance to both the OFPP statute and regulatory reform policies generally. If the potential exercise of regulatory authority by OFPP under these circumstances is likely to cause "tension" on the part of DOD, NASA, and GSA, so much the better.

Preservation of the Proper Role for OFPP

At the time of the last OFPP extension in 1979, we voiced to Senator Chiles and the members of the Subcommittee on Federal Spending Practices and Open Government our concern that, to a significant extent, there was not sufficient consideration being given, within the Executive branch of the government, to the proper role of OFPP in establishing procurement policy. As examples of what we had in mind we cited what we felt to be the misuse of OFPP to support the use of the government contract as a vehicle for the enforcement of President Carter's wage-price guidelines. On the other hand, on matters which clearly did relate to procurement policy, such as the issue of controls on defense contractor profits under the Renegotiation and Vinson-Trammell Acts, there was clear evidence that OFPP had been substantially bypassed in the formulation of the Administration position on the issue at that time.

Under the Reagan Administration, we had hoped that perhaps this problem might have been resolved. However, we were disabused of that notion with the publication on January 24, 1983 in the Federal Register by OMB of proposed revisions in Circular A-122 relating to political advocacy. As this Subcommittee is no doubt aware, the publication of the proposed regulations which would have been applicable to all government contractors (for-profit as well as nonprofit) and grantees, created a storm of protest and eventually led to hearings by the House Government Operations Committee, following which OMB Director Stockman withdrew the proposal in order to provide additional study and presumably an opportunity to consult further with interested parties on the matter. Our purpose in citing the issue at this point is not to argue the defects of the proposal which we think were readily apparent and even finally conceded, although with some reluctance, by both Messrs. Stockman and Wright. The point that is pertinent here is that the proposal apparently was drafted and defended in public, at least prior to the initial congressional hearing on the matter by the House Government Operations Committee, by Michael Horowitz, the OMB General Counsel. Further, as far as we can determine, OFPP played no role in the development of the policy embodied in the proposed regulations. This is despite the fact that the proposed regulations concern a matter of vital importance to government contractors, and OFPP is charged under its governing statute with the leadership role and responsibility with respect to the development of federal procurement policy. Clearly, the fiasco which resulted from the attempt to handle this proposed regulation without involving OFPP, might at least have been substantially mitigated if OFPP had been accorded its proper policy role in the matter. We hope that this unfortunate experience might suggest to the Administration, and to Messrs. Stockman and Wright in particular, that OFPP actually does perform a useful and perhaps indispensable function in the federal government. Its expertise and experience should be used when matters of procurement policy are to be resolved.

* * *

This concludes our statement of our views on the pending legislation concerning the extension of OFPP. If we can be of any further assistance, please let us know.

Respectfully,

Charles Stewart
President

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS
...the national voice of wholesale distribution

1725 K Street, N.W.
Washington, D.C. 20006
202/872-0885

John H. Fitch, Jr.
Vice President -
Government Relations

April 11, 1983

The Honorable William S. Cohen
United States Senate
530 Senate Hart Building
Washington, D.C. 20510

APR 1 '83

Dear Senator Cohen:

This is in response to your letter requesting the views of the National Association of Wholesaler-Distributors on legislation to reauthorized the Office of Federal Procurement Policy for five years.

In that regard, I have responded specifically to the questions presented by your letter and hope they will assist in your deliberations on the issue.

1. Question: Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

   Response: NAW strongly supports the reauthorization of OFPP. As for the number of years of the reauthorization, NAW has no specific recommendation.

   We believe that as long as standardization, uniformity and simplification of the Federal procurement system is a primary objective, OFPP should remain the central controlling body. However, that is not to say periodic legislative oversight in the form of reauthorization legislation is not useful.

2. Questions A: Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

   Response: Yes.

T.E. Addison, Jr.
Past Chairman
Atlanta, Georgia

Kenneth Adler
Chairman of the Board
Detroit, Michigan

Vincent A. Fochtman
Chairman Elect
Traverse City, Michigan

W. Scott Smith, Jr.
First Vice Chairman
Chester, Pennsylvania

Dan W. Ruple
Second Vice Chairman
Carson, California

Louis H.T. Dehmlow
Secretary
Chicago, Illinois

Question B: Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

Response: Definitely. An agency without regulatory authority and the ability to enforce it Government-wide is ineffective.

If reduction of the complexity, paperwork, and administrative costs of participating in the procurement process (particularly for small business) is to become a reality, OFPP must be given the statutory authority to act.

Question C: Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

Response: Absolutely. Without the authority to explore methods to accomplish the above stated objectives in a cost effective method to both the Government and the suppliers, OFPP will not have the ability to initiate reforms, only to react. If the procurement system is to become responsive to a constantly changing economic environment, it must have the flexibility to adapt to those changes.

Question D: Are there other authorities which you feel the OFPP should have?

Response: Yes. NAW believes OFPP, as an arm of OMB, should have the authority to determine paperwork and compliance burdens procurement forms and regulations have on suppliers as well as Government-wide reviewing authority on all procurement forms and information gathering needs and tools.

3. Question: Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

Response: Yes. Legislatively mandated responsibility gives the Congress the necessary authority to review specific agency practices and procedures in carrying out those responsibilities.

It is an additional necessary check on the system which has historically been rather non-responsive to purely administrative appeals in these areas.

4. Question: Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

   Response: Moderately so. Federal procurement reaches into every nook and cranny of the Federal bureaucracy and Congress.

   It is subject to countless administive rules, regulations, and by that very fact, is so complex and burdensome as to be overly costly and vitually inaccessable to wholesaler-distributors and other small businesses.

   Quite an impossible administrative task in our judgment.

   NAW believes that with legislatively mandated authority as outlined in this letter, coupled with strong Congressional oversight, OFPP can be successful in establishing a simplified, standardized, and uniform procurement system that is cost-effective for both the Federal Government and its suppliers. It will restore competition and accessability to the system for small business as well.

Senator Cohen, thank you for giving NAW the opportunity to comment on this important issue.

Sincerely,

John H. Fitch, Jr.
Vice President -
  Government Relations

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 21 1983

Senator William S. Cohen, Chairman
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs, SD-346
Washington, D.C. 20510

Dear Senator Cohen:

On behalf of Secretary Watt, I am pleased to respond to the questions contained in your letter of April 7, 1983, respecting reauthorization of the Office of Federal Procurement Policy. Your questions and our responses are presented below.

1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

We believe that the Office of Federal Procurement Policy (OFPP) should be reauthorized for an additional five years. This period of time will enable OFPP to continue exercising its critical leadership role in coordinating the implementation of Government-wide procurement reforms as required by Executive Order 12352.

2. The OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures and forms relating to procurement (P.L. 93-400). As a result of the 1979 amendments to the OFPP Act, the OFPP's directive authority was subsequently restricted to issuing policy directives, while the Director of the Office of Management and Budget was authorized to rescind any rule or regulation which was inconsistent with the policies issued by the OFPP (P.L. 96-83). With the reauthorization of the OFPP before Congress, the extent of its authority is again an issue.

A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

We feel it is important that OFPP's present authority be extended under reauthorization legislation. This authority, as a minimum, is required if OFPP is to effectively function in exercising its Government-wide procurement policy responsibilities.

B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

In our opinion, OFPP's original regulatory authority should be restored in order to ensure achievement of the procurement reforms mandated by Executive Order 12352. Without this authority, we believe OFPP's ability to resolve conflicts among agencies with regulatory authority will be seriously impaired.

We believe this authority is of critical importance in achieving successful administration and central oversight of the forthcoming Federal Acquisition Regulation during its initial stage of implementation.

C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

We believe testing authority should be granted to OFPP as it represents a controlled approach in supplying information to Congress on which statutory changes can be based. We feel the concept of testing new techniques, by selected agencies under the supervision of OMB, represents a valid approach toward simplifying and improving the procurement process as it pertains to the accomplishment of agency missions.

D. Are there other authorities which you feel the OFPP should have?

We suggest all authorities of OFPP under existing legislation be retained. We do not feel any other authorities, other than OFPP's original regulatory authority and new testing authority, are required in the reauthorization.

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

Since agency management responsibilities are already set forth in Executive Order 12352, we do not feel it is necessary or appropriate to include them in the reauthorization legislation.

4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

In view of its limited authority, we feel OFPP has functioned effectively in accomplishing its legislative mandate. We believe, however, that its effectiveness could be improved by restoring its original regulatory authority. The area of government-wide procurement reform is an extremely complex one requiring adjustments in approach as major accomplishments are made and lessons are learned. On this basis, we believe considerable progress has been made by OFPP since its establishment in 1974. However, if such progress is to continue during the implementation of major reform efforts over the next several years, we think the leadership role of OFPP needs to be strengthened if this organization is to function more effectively.

We appreciate the opportunity to provide our views on this important subject.

Sincerely,

Deputy Assistant Secretary - Policy, Budget
and Administration

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*NOT ADMITTED IN THE DISTRICT OF COLUMBIA

April 19, 1983

The Honorable William S. Cohen
Chairman
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Re: OFPP Reauthorization

Dear Senator Cohen:

As you begin hearings on the reauthorization of the Office of Federal Procurement Policy (OFPP), I am pleased to write in support of the reauthorization of a strong OFPP.

As a former Administrator of OFPP, I was most pleased to see that both you and Chairman Brooks have introduced legislation which, if enacted, would breathe new life into OFPP.

At a time when procurement reform and procurement policy issues are of critical importance to the effective expenditure of the American tax dollar, it is essential that an organization such as OFPP exist as an independent body within the Office of Management and Budget to direct, coordinate and guide government-wide procurement practices and lead any efforts at procurement reforms.

Failure to reauthorize OFPP would undermine the progress to date on implementation of the recommendations of the Commission on Government Procurement, would remove the impetus for interagency cooperation fostered by OFPP, and would feed the forces of dissention which seek to irreparably divide the agencies in their push for development of uniform procedures and practices for the civilian and military agencies. The catalyst of an OFPP can serve to advance the movement on competition and bring procurement executives together on issues like personnel standards, strict liability for government contractors and the FAR, and small business reforms. Without such an organization, the momentum for reform and regulatory improvements in procurement practices will be lost. For your consideration, I am enclosing a copy of a speech that I gave in Denver last fall in support of a strong OFPP.

With respect to the specific items raised in your letter of April 7, 1983, I am pleased to provide the following responses:

1. Q: Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

Answer: The Office of Federal Procurement Policy should be reauthorized for a minimum of five years. There is much work to be done to fulfill the ongoing responsibilities of that office to serve as a developer, coordinator, initiator and director of federal procurement policies and practices. In order to be effective in its relationships with the civilian and military agencies, it is essential that OFPP be free to structure its policy initiatives and regulatory initiatives free of any threat that an agency will disregard them with the knowledge that OFPP will be out of business in a few years. Continuity is thus critical to achieve improvements in federal procurement practices.

2. Q: The OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures and forms relating to procurement (P.L. 93-400). As a result of the 1979 amendments to the OFPP Act, the OFPP's directive authority was subsequently restricted to issuing policy directives, while the director of the Office of Management and Budget was authorized to rescind any rule or regulation which is inconsistent with the policies issued by the OFPP (P.L. 96-83). With the reauthorization of the OFPP before Congress, the extent of its authority is again at issue.

a. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

Answer: No. If OFPP is to serve truly as the principal procurement office for the Federal Government, with authority to direct, coordinate and implement procurement reform, it must have greater authority than simply the policy issuance authority granted in the 1979 Act.

b. Should the OFPP have regulatory authority as originally provided in the OFPP Act of 1974?

Answer: Yes. It would be in the best interest of OFPP, of the Federal Government and of the procurement community -- both public and private alike -- if regulatory authority were restored directly to OFPP. Although the precise language of the 1974 Act would certainly be acceptable, it might be advisable to strengthen it or to clarify the authority of OFPP to resolve differences among agencies with respect to regulatory developments. For example, it should be made clear that the Administrator of OFPP is the final arbiter of any differences arising from FAR Council deliberation on the federal acquisition regulation or any other disputed procurement policy matter.

c. Should the OFPP have testing authority as provided in the proposed Uniform Federal Procurement system to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds under case-by-case supervision from the director of OMB and the Congress?

Answer: In my view, there is no need to provide OFPP with additional statutory testing authority. Within the overall rubric of directing procurement policy, it will have the authority to direct testing, where needed. Indeed, testing of innovative procurement practices has been going on in a number of agencies for years. Each agency head has parallel discretion to be creative in its approach to procurement requirements. Moreover, the President's Executive Order 12352 of March 17, 1982 encouraged such action by agency heads. There is thus no need to put testing authority in this statute. By including such language, it may well send the wrong signal to the agencies, deflecting them from proceeding with dispatch to push forward with more comprehensive procurement reforms such as the FAR and refinements to contracting-out policies.

d. Are there other authorities which you feel the OFPP should have?

Answer: In addition to explicit regulatory authority, the OFPP should have the authority to establish its annual budget and to hire and fire its own staff, up to a predetermined ceiling, without clearing such matters through OMB. Finally, OFPP should have the authority to request that the Justice Department intervene in litigation which challenges the compliance of an agency with any OFPP regulation or directive.

3. Q: Should Congress proscribe any management responsibility as set forth in the first section of Executive Order 12352 of March 17, 1982?

Answer: It would seem hardly necessary for Congress to enact in statute the management responsibilities proscribed in Executive Order 12352. Management is best left to the executive branch, giving them flexibility to respond and make management decisions consistent with the overall policy of the Federal Government, as articulated by the Congress.

4. Q: Has the OFPP in your judgment been able to function effectively in fulfilling its statutory mandate?

Answer: Prior to 1979, OFPP was able to make significant progress with respect to fulfilling its mandate to serve as a policy initiator, implementor and director. Since 1979, however, the absence of regulatory authority and the lessening of support from the Director of OMB has made it more difficult for OFPP to be assertive and to be respected by the principal agencies. I believe it is in the interest of the government and the private sector for OFPP to be returned to its premier, directive role in the procurement arena.

Conclusions

Some final observations about the reauthorization of OFPP. First, it is critical for Congress to act quickly to pass this legislation. No further delays in congressional deliberations this year should be tolerated. The time for action is now.

Second, regulatory authority is also a key element to OFPP's continued survival. Without this authority, it would appear that there is no hope for the organization to recover its premier position in the contracts arena, nor to hold agency procurement officials accountable for their practices. Lastly, I would hope that OFPP could continue to rely on the support of the Administrator of the Office of Management and Budget in its efforts to achieve government-wide procurement reform. In my view, OMB, with its program review and oversight role, can be an effective partner in OFPP's successful achievement of its mission.

Thank you for the opportunity to provide these comments to the Subcommittee.

Sincerely,

Karen Hastie Williams

Attachment

ELMER B STAATS
5011 OVERLOOK ROAD, N W
WASHINGTON, D C 20016

April 18, 1983

The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter of April 7, inviting me to comment with respect to the Office of Federal Procurement Policy whose authorization expires on September 30, 1983. I will respond to the questions set forth in your letter in the order in which they are presented.

1. I would favor a minimum authorization of OFPP of five years. This is a permanent and continuing function and the only logic I know of for a limitation is to provide a more or less automatic way to bring the matter back before the administration and the Congress for review. This, of course, could be done in other ways but I know of no practical argument against some reauthorization requirement but I would certainly favor a five-year period as a minimum.

2. A. I am aware that at least some of the procurement agencies have resisted the provision included in the 1974 legislation which gave the OFPP regulatory authority with respect to procurement policies, regulations and forms relating to procurement. It was my view when I testified on this subject in 1979 that the alternative which was incorporated at that time, namely giving the Director authority to rescind any rule or regulation inconsistent with the general policies issued by OFPP, was not really a workable approach. The question of what is consistent or inconsistent is a difficult one to decide and I believed then, as I do now, that a more direct approach is the proper one.

There is, of course, always the question as to a differentiation between general regulations as against more detailed type of regulations which I believe have been the concern of the procuring agencies. This is a matter of judgment and must be worked out on a pragmatic basis, case by case, between the Director of OFPP and the procuring agencies. I believe that the wording of the Committee Report would help on this point by way of guidance to avoid a situation where OFPP regulations become unnecessarily detailed. There is ample precedent, however, in the types of regulations issued by OMB in many other management and budgetary areas and I, therefore, do not consider this to be a valid reason for not providing regulatory authority to the OFPP. Without such authority, there is no way that we can assure consistency in practices, procedures and policies as among the different procuring agencies.

B. The Federal Procurement Commission placed high priority on the need for a uniform Federal Procurement system. Much progress has been made in the formulation and development of such a statement and the OFPP will need regulatory authority, plus strong leadership, to be certain that this system is placed into effect.

It has been my view that OFPP could utilize agency resources to a large extent in formulating drafts and achieving consistency to the maximum extent but the residual right and responsibility to issue regulations should remain with OFPP.

C. You inquire whether OFPP should have testing authority to engage in innovative procurement techniques, involving the waiver of statutory socio-economic thresholds, under case-by-case supervision of the Director of the OMB and the Congress. The issue of achieving socio-economic objectives through procurement was a matter of extensive discussion within the Procurement Commission and I do not think I can add much beyond the wording of the Commission report itself on this point. I would certainly favor language which would provide that the OFPP should be able to test innovative procurement techniques where these hold promise of more economic and efficient procurement operations. If this is done with respect to socio-economic objectives, it should be done solely for testing potential savings by removing or modifying existing requirements such as small business set-asides, Davis-Bacon restrictions, and so forth. In general, procurement is not a cost-effective way to accomplish these objectives but I am aware that there are a large number of such provisions written into procurement statutes. As a possible alternative, you might wish to consider requesting the General Accounting Office to undertake studies of the cost of such programs on the procurement operations of the Federal Government with the idea that Congress would have an opportunity to determine whether procurement is the most cost-effective way to achieve these objectives. This would still leave a considerable range for innovative and testing approaches by OFPP. For example, in the acquisition of commercial products, payment and inspection procedures, parallel development, and so forth.

D. With respect to other authorities which might be placed in the OFPP, I have not given this matter recent thought but I suspect that the language in the 1974 statute is broad enough to achieve the basic objectives of the Federal Procurement Commission.

3. I have not recently reviewed the agency management responsibilities set forth in the President's Executive Order of March 17, 1982, but my impression is that this is a useful way to approach the subject, given the President's responsibility for management of the executive branch. I question whether the Congress wishes to incorporate the order specifically into the statute but certainly the statute should recognize the President's responsibility for sound procurement management within the agencies.

4. In general, I believe that OFPP has made good progress. My experience in dealing with this subject, going back over many years, is that the procuring agencies have resisted and will continue to resist central actions which they consider to be an impingement upon their responsibilities as procuring agencies. We now have the mechanism, however, which will help bring consistency in procurement operations and greater economy and efficiency in spending procurement dollars. This is especially important now that the defense procurement is increasing and will continue to increase in the years ahead. It is important, therefore, that the regulatory responsibility be restored to OFPP so that OFPP and OMB can be held accountable to the Congress for achieving the basic objectives of the 1974 legislation.

Sincerely,

Elmer B. Staats

Elmer B. Staats

NSB
National Small Business Association
"The Voice of Small Business"
Founded 1937

April 21, 1983

The Honorable William Cohen, Chairman
Subcommittee on Oversight of Government
Management
Committee on Government Affairs
S. D. 346
Washington, D. C. 20510

Dear Senator Cohen:

This is in response to your letter requesting our answers to specific questions concerning proposed legislation in consideration of the reauthorization of the OFPP:

1. The Office of Federal Procurement Policy should be reauthorized for a five-year term.

2. The OFPP should have regulatory authority as originally provided in the OFPP Act of 1974. The OFPP should not have "testing authority" to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds.

3. Congress should prescribe agency management responsibilities.

4. The OFPP has not been able to function effectively in fulfillment of its statutory mandate. Experience over the past years indicates little progress has been made in improving federal procurement practices and procedures.

The following areas need more direct action by OFPP in fulfilling government policies on procurement which were stated by President Reagan in his 1983 "State of Small Business - A REport of the President Transmitted to Congress in March 1983," as follows:

> "Our government policies on procurement must be administered so as to utilize the best that small firms have to offer in goods and services. The role of government should not include performing

> services and activities that can effectively and efficiently be carried out by the private sector, and we will work for policies which increase reliance on the private sector."

The past record indicates that OFPP has not functioned effectively in overcoming major obstacles to small business participation in federal procurement. These include:

1. Inadequate time allowed from the date of publication of the bid notice in the Commerce Business Daily to the bid opening date.

2. Inadequate time allowed from the date of publication of bid notice in the Commerce Business Daily to closing date for honoring requests for bid sets.

The U. S. Department of Commerce is responsible for compiling, editing and publishing the Commerce Business Daily. We have had meetings and discussions with responsible officials of the Department of Commerce directed toward improvement in the CBD which would facilitate its use by small business. We have been assured by the Department of Commerce that consideration will be given to our suggestions.

Changes in procedures suggested include the extension of time for solicitations and bidding as recommended in S. 272.

We also suggest that the CBD format be modified to list bid opportunities in specific categories as follows:

1. Competitive Bids
    a. Open
    b. Small Business Set-Asides
2. Information Synopses for Subcontractors' Alert
3. Noncompetitive Notice Listings
4. Contract Awards Listings
    a. Open
    b. Small Business Set-Asides

We also suggest that consideration be given to listing bid opportunities by four-digit SIC Code identification. This would permit a more direct identification of products and services of interest to potential bidders and a more readily identifiable basis for assessing business participation in the government procurement market by types of business in relation to the government procuring agency area of specific interest in procurement policy.

Our experience over the past 10 years with the NSB/BEAM service, which alerts our members to federal requests for bids, indicates that many bid opportunities for small business are lost due to the inadequate time allowed for receiving bid notices and preparation of bids.

Provision should be made for continued Congressional surveillance over the actions of the OFPP in relation to the pursuit of the Congressional intent to increase small business participation in federal procurement. In recent testimony on "umbrella contracts" OFPP presented a position favoring umbrella contracting, while the Small Business Administration presented a position opposing umbrella contracting as a constraint on small business participation in federal procurement.

Sincerely,

Herman Director
Federal Procurement Administrator

Coalition
for
Common
Sense
in
Government
Procurement

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April 22, 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
  of Government Management
Committee on Governmental Affairs
SD-346
Washington, D.C. 20510

Dear Senator Cohen:

Thank you for giving the Coalition the opportunity to comment on the reauthorization of the Office of Federal Procurement Policy (OFPP).

It is our opinion that OFPP could provide valuable functions to the government, and industry, if its original powers were returned. In addition, it would be particularly effective for OFPP to have oversight of agency procurement regulatory and policy (including internal agency policies) making activities. With this additional review process, there is an opportunity for someone, other than the procuring agency which develops the policy, to scrutinize the regulation or policy for unnecessary burdens or adverse impact on businesses.

The Coalition considers it advantageous that OFPP have the testing authority that is provided for in the proposed Uniform Federal Procurement System. This would allow the government to examine different procurement techniques without hindering the daily operations of individual agencies. We envision that OFPP could request the short-term assistance of selected agency procurement personnel so that a number of agencies could jointly participate in the test efforts and learn from the experience.

Over the past few years, OFPP's importance appears to have withered to the degree that industry wonders if it will exist next year. The procurement activity of the federal government is worth billions of dollars and there needs to be an overseer of how agencies spend this money -- a "watchdog" that operates in full view and with authority. Without an effective OFPP, agencies can too easily operate as if they are functioning in a vacuum, as opposed to being a part of a government-wide organization. The procurement process would be a nightmare for government vendors if there were no office to coordinate and monitor the developing procurement rules.

Finally, S. 1001 does not increase the agency's budget, and the Coalition thinks it is essential that additional funds be appropriated for OFPP so it could better handle its responsibilities over the next five years. With more funds, in addition to the obvious reasons, the Federal Acquisition Institute, for example, could improve its training activities for government procurement personnel -- an extremely valuable and badly needed service today.

The Coalition is willing to meet with your staff or answer any other questions you might have regarding OFPP. Please do not hesitate to contact us. Again, thank you for this opportunity to offer our views.

Sincerely,

Paul J. Caggiano

Paul J. Caggiano
President

PJC/mm

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RICHARD E. HORNER
Chairman & Chief Executive Officer

TELEPHONE 507-835-8200

April 25, 1983

APR 27 '83

The Honorable William S. Cohen, Chairman
Subcommittee on Oversight
of Government Management
The Committee on Governmental Affairs
SD-346
Washington, DC 20510

Dear Senator Cohen:

The purpose of this letter is to provide response to the individual questions of your letter of April 7, 1983.

1. Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

It was the intent of the Government Procurement Commission to establish the Office of Federal Procurement Policy as a leader in the reform and standardization of government procurement practice and, subsequently, serve as the executive manager of such policy and practice to be sure that the government's program was alive and responsive to evolving needs with coordinated understanding throughout the using agencies. It was unfortunate that the necessary authority was compromised by the amendments of 1979, and it is therefore doubly important that the office should be reauthorized at this time and made a permanent part of the government's management structure.

2A. Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

As indicated above, in order for the Office of Federal Procurement Policy to perform its intended role, the authority provided in the original legislation should be restored with the additional specific mandate to achieve a uniform federal procurement system and provide the necessary leadership to assure its adaptation to all government purchasing.

2B. Should the OFPP have regulatory authority, as originally provided in the OFPP Act of 1974?

The strongest reason that the government does not have a single procurement system at the present time is that procurement people in different agencies like to assert their independence by devising unique procurement procedures. Obviously, there is little justification for the government to use different buying procedures for different programs. There is, therefore, a need for one authority to adjudicate differences between agencies and monitor the uniform application of the best procurement system that can be adapted from all those that are currently in use. This would dictate the need for a regulatory authority by the Office of Federal Procurement Policy.

2C. Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

Yes. As a part of its responsibility to keep the procurement system modern and abreast of changing requirements, it will be necessary to amend the Uniform Federal Procurement System from time to time. Accomplishing such changes by testing them in actual practice is a logical procedure.

2D. Are there other authorities which you feel the OFPP should have?

The government sorely needs a senior administrative and auditing authority to assist it in its make-or-buy decisions. The government's policy of relying on the private sector for supplies and services is more frequently honored in the breach than in its observance. There can be little question that this occurs because the case for enlarging internal government operations is most frequently made by people who have a vested interest in the enhancement of job qualities and the enlargement of government. The OFPP is ideally situated to surveil the make-or-buy decision-making process and test all such recommendations against the established criteria of government policy. In a time period of overwhelming government deficit expenditures, the prioritizing of government programs should not be confused by the difficulty of evaluating noncomparable economic measurements and government facility and civil service recommendations.

3. Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

   There is some merit in a time of innovation and introduction of the new procurement system to permit some flexibility to the Executive Branch. At some point it would be desirable to have a complete procurement statute, but this might more appropriately be accomplished at the end of the five-year term that you are proposing for the renewal of the legislation, if that continues to be your objective.

4. Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

   It would have been more effective without the constraints of the 1979 amendments, but since that aberration is now behind us, the expiration of the present authorization in 1983 provides an opportunity to reassert the need of our government, as determined by the Congress, to establish a uniform federal procurement system. It is patently ridiculous to tolerate the inefficiency of multiple procurement systems in a government that continues to become an ever-increasing force in our industrial society.

Thank you for the opportunity to respond to your questions. You have our best wishes for the resolution of the important issues before your subcommittee.

Sincerely yours,

Richard E. Horner

kva

PETER DIERKS JOERS
INVESTMENTS
FIRST NATIONAL BANK BUILDING
HOT SPRINGS, ARKANSAS 71901
501/624-5648

RESIDENCE
PHONE 501/321-2112

April 19, 1983

Subcommittee on Oversight of Government Management
Committee on Governmental Affairs, SD-346
Washington, D. C. 20510

Gentlemen:

This is in response to Senator William S. Cohen's letter to me dated April 7, 1983 regarding legislation which would reauthorize the Office of Federal Procurement Policy for an additional five years.

The following answers are in the sequence of his questions as stated in his letter:

1. Yes. I believe the Office should be reauthorized for a minimum of five years and consideration should be given to making it permanent.

2A. The authorities given to OFPP under the 1979 amendments to the Act were tailored to meet the requirements of specific statutory assignments. OFPP has successfully completed those assignments. The authorities provided in the original OFPP legislation now should be reinstated so that OFPP can implement the UFPS and continue to provide strong leadership in procurement reform.

2B. Yes. OFPP should have regulatory authority again. This is not to say that OFPP should undertake a large scale effort to develop regulations as this is an agency function but it should have regulatory authority to resolve differences among agencies and to prescribe regulations in case the agencies fail to issue necessary regulations.

2C. Yes. OFPP should have testing authority as proposed in the UFPS. There is a need in the procurement community for testing innovative procurement techniques. These tests may require waiver of existing statutory provisions and, therefore, there is a need to include a provision for testing in the statute. More selective application of socio-economic thresholds is only one area in which OFPP should undertake a testing program. Examples of other needed tests are using commercial practices to procure commercial products and developing simplified purchasing techniques for specific commodity groups under specific dollar ceilings.

2D. Yes. Providing the Administrator of OFPP with regulatory authority and not subjecting that authority to concurrence by the Director of OMB should give the Administrator sufficient authority to effect procurement reform.

3. Yes. The principles enunciated in the Executive Order are fundamental to sound procurement and should be included in statute in order to ensure that procurement reform is pursued.

4. If the question is "did OFPP accomplish the specific tasks assigned to it by the 1979 Amendments to its Act," the answer is yes. However, if you mean "can OFPP effectively provide the leadership and policy direction required for procurement reform under the authorities of the 1979 Amendments," the answer is no. It is necessary for OFPP to have regulatory authority, as well as policy direction, in order for it to function effectively.

I trust these answers will help you in your discussion during the hearing scheduled for April 27, 2983.

Yours very truly,

Peter D. Joers

PDJ:bgm

122 Highland Street
Holden, Massachusetts 01520

April 20, 1983

Honorable William S. Cohen
Chairman, Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I am writing in response to your letter of April 7, 1983, regarding the legislative reauthorization of the Office of Federal Procurement Policy as well as addressing certain vital issues fundamental to the effective functioning of this office.

The Commission considered the creation of this central policy office as its initial recommendation. Without the existence and leadership of the Office of Federal Procurement Policy, as proposed and as structured by the Commission, the achievement of the proposed improvements in the procurement process and implementation of the recommendations of the Commission would have proceeded with great difficulty and without organization.

I appreciate the opportunity as one of the Commissioners on the Commission on Government Procurement to respond to your questions and comment on other issues that you may desire to consider.

If you have any additional questions regarding my response or comments, please contact me.

Sincerely,

Paul W. Beamer

P. W. Beamer
former Commissioner - Commission on Government Procurement
PWB/eac

1) Should the Office of Federal Procurement Policy be reauthorized? If so, for how many years?

A) Yes, the Office of Federal Procurement Policy should be reauthorized.

Although previous reauthorizations have been for a five year period, the Commission intended this Office to be the leader and motivating force for the major implementation of the Commission Report.

The growth and complexity of the total procurement function both within Government and industry have not declined. The need for an OFPP is greater today than when initially proposed and first created in 1974. The function of OFPP as intended by the Commission would dictate a permanent and indefinite life. To provide adequate continuity in finalizing the Federal Acquisition Regulation (FAR), the proposal for a Uniform Federal Procurement System (UFPS) as a model for procurement reform, the continued existence of OFPP is essential if procurement reform within the Federal Government are to become a reality. These are some of the vital issues and major concerns addressed by the Commission. It is discouraging a decade later to find that we have not progressed further with the implementation of many of the vital concerns. Without the diligence and dedication of OFPP, confronted at times by external obstacles, our work and recommendations would not have reached the present status.

2) The OFPP was established in 1974 with directive authority to prescribe policies, regulations, procedures and forms relating to procurement (P.L. 93-400). As a result of the 1979 amendments to the OFPP Act, the OFPP's directive authority was subsequently restricted to issuing policy directives, while the Director of the Office of Management and Budget was authorized to rescind any rule or regulation with was inconsistent with the policies issued by the OFPP (P.L. 96-83). With the reauthorization of the OFPP before Congress, the extent of its authority is again an issue.

2-a) Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

A) The authorities given to OFPP under the 1979 Amendments to the Act were tailored to meet the requirements of specific statutory assignments have been successfully completed.

The authorities provided in the original OFPP legislation should be reinstated in order that this Office can perform the basic responsibilities, direction and authority as recommended in the original Commission's Report.

2-b) Should the OFPP have regulatory authority, as orginally provided in the OFPP Act of 1974?

A) The regulatory authority originally provided in the OFPP Act of 1974 supported the basic structure and responsibilities of this Office as proposed and recommended by the Commission. To my knowledge there is no authoritative source in the Executive Branch knowledgeable of the manner in which the agencies and departments are implementing or interpreting Government wide procurement policies and impact onthe private and public sectors. The existence of OFPP is a single point which should have objective authority with respect to procurement policies, regulation, procedures, utilized by contracting agencies.

Congress provides adequate flexibility to the Executive Branch in conducting procurement; likewise, OFPP must prescribe policies and regulations in a manner that recognizes legitimate differences in products and services required to meet agency needs.

"Regulatory authority" does not imply a "regulatory agency." OFPP would regulate only in the sense that it proscribes and participates in the policies and regulations governing the manner in which the Federal agencies conducted procurement.

The OFPP should function as a group independent of any agency engaged in any procurement function and focus on procurement problems, procedures, regulations and forms.

2-c) Should the OFPP have testing authority, as provided in the proposed Uniform Federal Procurement System, to engage in innovative procurement techniques involving the waiver of statutory socio-economic thresholds, under case-by-case supervision from the Director of the OMB and the Congress?

A) The entire procurement process is a dynamic ever changing business process. Modern procurement practices are a vital part of total "materials management" which encompases "money management", material control, and in most major corporations, one of the most crucial management disciplines, particularly in the successful enterprise. These practices, organizations and philosophies did not develope spontaneously, but were evolved because of the high percentage of both cost and selling price of products which are directly contracted by the material management and procurement group.

There is a need in the Government procurement and materials management for testing and evaluating procurement techniques. These tests may require waivers of existing statutory provisions and thereby dictate the need for a provision for testing to be included in the statute.

More selective application of socio-economic thresholds, broader investigation and use of commercial practice to procure commercial products, development of simplified purchasing techniques for specific commodity group - are each major areas which should be tested.

2-d) Are there other authorities which you feel the OFPP should have?

A) The Administrator of the Office of Federal Procurement Policy should be provided with regulatory authority and this authority should not be subject to concurrence by the Director of OMB. The present status restricts the Administrator's authority and inhibits his ability to effectively undertake procurement reform.

3) Should Congress prescribe agency management responsibilities as set forth in the first section of Executive Order 12352 of March 17, 1982?

A) Yes, those principles enumerated in the Executive Order are fundamental to sound procurement and should be included in statute in order to ensure that procurement reform is pursued in accordance with the multi-recommendations and subsequent refinements proposed by the Commissioner on Government Procurement.

4) Has the OFPP, in your judgment, been able to function effectively in fulfilling its statutory mandate?

A) The OFPP has functioned in an outstanding manner in view of the restraints imposed by the 1979 Reauthorization Act.

In spite of the restraints, the OFPP has:

1) Kept the FAR project alive

2) Succeeded in getting Executive Order 12352 issued

3) Maintained discussions and explorations of sound and innovative procurement policies.

The stature and effectiveness of the Office has been reduced by the elimination of OFPP's directive authority and the subjection of the actions of the Administration to concurrence by the Director of OMB.

OFPP was intended to provide a "focal point" for procurement policies and regulations. The assignment of responsibility for issuing procurement regulations to GSA, NASA, DOD by the Executive Order has complicated the role of OFPP.

These actions have relegated the OFPP to a position in which sources both inside and outside the Government consider the Office "second class". The imposition of these restraints in no way concur with the recommendations and responsibilities envisioned by the Commission which are firmly and distinctly stated in the first recommendation of the Report - "This Office was to operate on a plane above the procurement agencies and have directive rather than merely advisory authority." The present statute is not conducive to fostering the objectivity, innovation and relationships needed to provide the overall improvements in the procurement process.

JAMES E. WEBB

2800 36TH STREET, N W
WASHINGTON, D. C 20007

April 20, 1983

The Honorable William S. Cohen
Chairman
Subcommittee on Oversight of
Government Management
United States Senate
Washington, D. C. 20510

Dear Senator:

I appreciate the opportunity your letter of April 7 affords me to comment on the need for a strong professional leadership role for the Office of Federal Procurement Policy, as recommended by the Commission on Government Procurement. This is very much needed. More and more we are learning that a coordinated, government-wide systems approach is essential if our government is to be effective. Such a "systems approach" was effective in NASA and has proved its worth in many endeavors. Congress can gain much in carrying out its policy and oversight functions from a thoroughly professional, constantly improving procurement system.

As the Director of the Budget under President Truman, it was one of my important responsibilities to make sure that the staff of the Bureau of the Budget worked vigorously and continuously with the different departments and agencies which were engaged in large procurement activities. It was our responsibility to take actions, with the full support of the President, which would bring pressure to bear on the leadership of the various large units of government to pay attention to improving their internal administrative structure, and their decision-making and actions in procurement. This need for a central professional group is even more true today than it was in the late forties. The main reason is that when very outstanding individuals are brought into the government to head a department or unit or serve in an important leadership role, they are faced with so many large problems in areas of substance that it is almost impossible for them to master the intricacies of the administrative actions that undergird the effectiveness of their substantive roles.

Therefore, a constant pressure from the highest levels of government is necessary to keep before these people their responsibility for strong leadership in administrative improvement if they are to do one hundred percent of their job and not just the part that presses for immediacy or is less onerous and less technical. It is to stress this role of leadership at the Presidential level, including the Executive Office of the President, that I wish to urge strengthening the Office of Procurement Policy and providing it with the kind of statutory base which has the added value of assistance to Congress in exercising its oversight role. Both Presidential leadership and Congressional oversight are needed to get continuous attention to this important area by the senior officials within the Executive Branch. This will also provide a means through which all elements of our society can have confidence that the policy of using procurement to define the relationship between the government and the private sector are consonant with our democratic institutions. This would certainly argue for reauthorizing the legislation underlying the Federal Procurement Policy Office and providing even more than the five-year period that has been suggested to indicate that this is a long-term, hard-driving effort to improve the government uses of the private sector in accomplishing its governmental responsibility.

To be fully effective, it would be very important for the new legislation to return to the authority granted the office prior to the amendments of 1979. If anything, my experience shows that it is more important to strengthen the directive authority as provided in the Act of 1974, rather than to weaken it by accepting the 1979 amendment structure.

As to the testing authority you list in your paragraph 2.C., I have looked over the answers provided by the American Bar Association, of which I am a member, to your Committee and believe they are the best point of action in this field. This refers also to your paragraph 2.D. with respect to other authority. My feeling is that the ABA has given you a splendid base from which to consider the actions to be taken by your Committee. As to your paragraph 3, I believe Congress should prescribe the agency's management responsibilities, rather than leave them to executive order.

As to your paragraph 4, I believe the present Director of the Office of Procurement Policy, Don Sowle, who was the Executive Director of the Commission on Government Procurement, has done all that could be done within the framework of the Executive Office as now organized. Procurement policy should be non-political and have bipartisan support. A very strong professional team, thoroughly qualified and working with those officials in the various government agencies who wish to see the total procurement process made more efficient and more effective, is the objective, I think, the Committee should seek in its consideration of the future of this office.

Although I know you and your staff have access to the Comptroller General's pronouncements, I am enclosing a copy of his address made at the College of Business Administration at the University of Notre Dame, March 24, 1983, entitled "Perspectives on the Federal Budget," to make it easy for you to refer to it. Bowsher states, after going through many of the problems faced by the Executive Branch and contributing to the large deficits which seem almost impossible to eliminate: "We need to move to a broad concept of financial management in the Federal Government that encompasses the processes and functions associated with acquiring, managing, deploying and accounting for the Federal Government's financial resources. We need systems that will assure us that, to the maximum practical extent, these financial resources -- and the real resources they represent -- are acquired and used lawfully, efficiently, and effectively to achieve purposes of commensurate value to society." It seems to me this is the focus your Committee might well employ in your study of the role of the Office of Procurement Policy. Mr. Bowsher has seen the procurement problem from the Defense Department point of view, the public accounting point of view, and now as Comptroller General. Anything that undermines the breadth of emphasis on those matters he refers to should, in my view, be put aside and efforts made to strengthen those recommendations which he has made. Comptroller General Bowsher states further: "In Government, we need a bi-partisan recognition of the problem and a resolve to deal with it. We also need the development of a consensus of agreement among public officials and the full spectrum of private interests on an equitable allocation of sacrifice."

With much appreciation for your leadership in improved administration, I am

Sincerely yours,

James E. Webb

James E. Webb

APPENDIX B

[The following information submitted by Dr. Richard D. DeLauer, Under Secretary of Defense follows:]

THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

8 JUN 1983

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN, JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Guidance on the Acquisition Improvement Program (AIP)

Approximately two years ago we initiated the AIP as a concentrated, high-level effort to solve long-standing problems in the acquisition process. The original 32 AIP initiatives have clearly indicated to us various means of shortening the acquisition process, increasing readiness, providing cost savings, and strengthening the industrial base. Attached is a report from the AIP Steering Group reflecting the consensus on the progress we have made in implementing this management endeavor (Attachment A). This report provides a detailed status of each of the 32 AIP initiatives, describes specific actions that remain to be taken and recommends six major areas for my personal emphasis. The report notes that 13 of the initiatives have been implemented and require only periodic monitoring. Nine of the initiatives show varying degrees of progress but require further implementing action by the Office of the Secretary of Defense (OSD) and Service staffs, whom I charge with the responsibility of completing the specific actions called for in the report. The implementation objectives from the second year-end report are summarized in Attachment B.

I approve the recommendations in the report and plan to concentrate personally on improving the following six major areas: (1) Program Stability, (2) Multiyear Procurement, (3) Economic (Stable) Production Rates, (4) Realistic Budgeting, (5) Improved Readiness and Support, and (6) Encouraging Competition. These areas of emphasis offer both the greatest management challenges and the highest potential payoff. I am aware of the intractability of some of the problems they are designed to solve. Collectively, we need continuous high-level concentration to give fresh impetus to them through definitive management actions.

In order to emphasize my personal interest in the AIP, I have asked Sol Love to join my immediate staff to be my key representative for the AIP and to provide oversight to ensure implementation of these acquisition initiatives.

I am establishing high-level working groups from OSD and the Services for each of these six areas. These working groups will be chaired by representatives from the cognizant OSD offices and will identify specific milestones and plans of action within 45 days of the date of this memorandum. I would like the Services and OSD offices to nominate their members to Sol Love within seven days and would hope that there is some continuity in the AIP Steering Group representatives. I expect the working groups to report periodically on implementing these six AIP areas of emphasis.

I would also like the Joint Logistics Commanders to continue their fine efforts in implementing the entire package of acquisition initiatives in the buying commands and to report periodically to me on implementation progress with the primary focus on the six areas of emphasis.

Paul Thayer

Paul Thayer

Attachment
a/s

ACQUISITION IMPROVEMENT PROGRAM (AIP)

SECOND YEAR-END REPORT

May 18 1983

Harvey J Gordon

HARVEY GORDON
CHAIRMAN
AIP STEERING GROUP

Attachment A

Initiative No. 1: Acquisition Management Principles

The management principles include: improving long-range planning; delegating responsibility, authority, and accountability; emphasizing low-risk, evolutionary technology; achieving more economical production rates; budgeting realistically; improving readiness and sustainability; strengthening the industrial base; and improving relations with industry.

STATUS

This initiative has been essentially completed, but continued monitoring is required.

- This is an umbrella initiative summarizing the key thrusts of the Acquisition Improvement Program. These principles have been institutionalized in DoD and Service documents, and are currently in practice.
- DODD 5000.1, reissued in 1982 March, stresses the importance of the management principles.
- Many of the principles such as readiness, realistic budgeting, and economical production rates are, of course, covered by specific initiatives. Others, such as delegation of authority, responsibility, and accountability within the Services require continuous management attention.
- The Defense Systems Management College (DSMC) includes these principles in its courses.
- DSMC and the Services are examining incentives for program managers and other acquisition personnel to ensure that the right motivators are in place to achieve desired results.
- The planning process has been changed to incorporate a major DRB review of policy and options prior to issuing defense guidance.
- An Indirect Cost Monitoring Office (ICMO) has been established in OUSDRE(AM) to monitor contractor overhead costs.
- A Contract Administration Directorate in OUSDRE(AM) has been established to ensure consistent and improved contract administration policy throughout DoD.
- An Industrial Productivity Directorate has been established in OUSDRE(AM) to act as a focal point and proponent for a broad range of issues fostering increased productivity of defense contractors.
- DoD is working with the Office of Federal Procurement Policy to implement Executive Order 12352. DoD chairs 3 of the 4 interagency task forces that are developing model charters to enhance procurement efficiencies for the entire Federal government.
- DoD, GSA, and NASA are developing a single simplified federal acquisition regulation (FAR) that will be used by all Federal agencies. It will have an effective implementation date of 1 April 1984.

RECOMMENDED ACTION

- Continued monitoring by OSD and the Services.

Initiative No. 2: Pre-Planned Product Improvement (P^3I)

This initiative is designed to ensure an evolutionary, lower-risk approach to weapon system design in order to reduce unit costs and decrease the time needed to field new equipment.

STATUS

Further staff action is required.

- A DOD-wide P^3I implementation plan was signed by the DEPSECDEF and issued in July 1981. It contained application criteria and required P^3I focal points to be appointed in the three Services. The focal points are: Army - DCSRDA, Navy - NAVMAT, Air Force - AFRDX.
- DODD 5000.1 was revised to require that P^3I be considered for each new system and that product improvement of an existing system be considered as an alternative to a new development. Procedures for this were included in DODI 5000.2.
- The FY84-89 Defense Guidance directed the Services to identify significant P^3I efforts. As a result of P^3I emphasis, 26 systems (8 Army, 8 Navy, 6 Air Force, and 4 joint Navy/Air Force programs) were highlighted. Resources have been applied to higher priority P^3I efforts. For example, in the JVX program an existing engine will be adapted for the basic program. Simultaneously, development of a more capable, modern technology engine will begin. Other examples are the 120mm gun for the M-1 tank, incorporation of VLSI in the ASJP, and incorporation of VHSIC in JTIDS.
- P^3I is actively addressed in all DSARC's and an increasing number of Service SARC's. USDRE and the Services are examining the 15 FY83 and 10 FY84 new starts for P^3I content. Such programs would build growth potential into the design for later incorporation of required evolutionary characteristics.
- Philosophical bias continues to impede full implementation. DOD, and especially industry, generally prefer selection of new high-technology systems of great capability as opposed to modest improvements in existing systems, or new systems of more limited capability that can be upgraded later. Implementation is also hindered because providing for P^3I frequently entails greater front-end cost and possible performance penalties.

RECOMMENDED ACTION

- Continue the DOD review of P^3I in the FY 1985-89 POM process focusing particularly on FY 1985 new starts.
- Continue to consider P^3I approaches at DSARC Milestones.
- USDRE should review P^3I content in the FY 1983 and FY 1984 new starts.
- The Services and ASD(C) should ensure adequate front-end funding for P^3I programs.

Initiative No. 3: Multiyear Procurement

This initiative is designed to reduce the cost of mature, low-risk weapon programs already in production by funding economical lot buys instead of small, piecemeal, annual buys.

STATUS

Significant progress has been made; however, this initiative should receive DEPSECDEF emphasis because of its high potential for cost savings.

- Expanded use of multiyear procurement (MYP) on major weapon systems was approved in the FY82 Authorization Act.

- Congress approved 8 initiatives in FY82 for a projected savings of $.8B (F-16 airframe, TRC-170 radio, C-2 airframe, BLACKHAWK airframe, ALQ-136 jammer, SM-1 rocket motor, M-1 fire control, and NAVSTAR).

- Congress has approved 5 (MLRS, BLACKHAWK engine, KC-10, NATO Sea Sparrow, MK-46 torpedo) of the 12 proposed FY83 multiyear candidates (estimated savings: $1B). In addition, the DMSP program will be resubmitted in FY83.

- Six new FY83 candidates for multiyear were proposed in the FY84 budget (AH-64 engine, CH-47D mod, M-60 tank thermal sight, Bradley Fighting Vehicle components, F/A-18 engines, B-1B airframe and major subsystems). Estimated savings: $1.5B.

- Eight FY84 candidates for multiyear are proposed (LSD-41, MK-30 target, SSQ-62 sonobuoy, TB-16 towed array, MK-45 gun mount, F-15, AN/TSQ-11 communications nodal control element, KC-135 re-engining). Estimated savings: $1.1B.

- DLA and Services have been using the MYP technique on many smaller programs - in the aggregate savings are substantial (in excess of $200M).

- In December 1982 OSD reaffirmed its MYP funding policy to fund economic order quantities to the limit of termination liability, but retained flexibility to allow other funding approaches on a case-by-case basis.

- FY 1983 CRA restrictions have increased the reporting burden on DOD and delayed new multiyear starts.

  - prior notification required on all EOQ purchases
  - reporting required on all programs with cancellation ceiling greater than $20M (c.f. to $100M in FY82 authorization act)
  - all major system MYP candidates required to be specifically provided in authorization bill.

- There is the continuing perception that funds for MYP up-front costs will come at the expense of other annual-buy programs.

RECOMMENDED ACTION

- This initiative requires continuing DEPSECDEF emphasis.

- USDRE and ASD(C) should work to convince the Congress to repeal the limitations on multiyear procurement in the FY 1983 Appropriations Act.
- OSD should continue to provide up-front TOA.
- DOD should continue to emphasize existing MYP, consider additional candidates for MYP, and also analyze the MYP cost benefits available in smaller dollar value programs.
- The Services and OSD should collect data on actual savings already experienced.

Initiative No. 4: Program Stability

This initiative is designed to increase the stability of weapon system acquisition by adequately funding R&D and procurement in order to maintain the established baseline schedule and reduce cost growth.

STATUS

Further high-level effort is needed to assure full implementation.

- A stable programs list has been developed. It consists of multiyear programs already approved by Congress for FY82 and FY83, and includes the new programs proposed for multiyear as additional FY83 and FY84 candidates. There are 27 programs in all.
- Review of major system new starts is now part of the POM review process, and will focus on out-year affordability before new programs are approved. So far, decisions have not been made on this basis.
- Major system new starts receive insufficient management attention because the budget year costs are modest compared to the typical multi-billion dollar decisions reviewed by the DRB. For example, the FY 1984 cost of the approved FY 1984 new starts is only $177M, whereas estimated total program cost is $64B.
- OSD continues to approve all new starts submitted in the POM cycle. Although the near-term impact on the budget is slight, these programs will cause a worsening affordability problem in the outyears of the FYDP and the EPA. Once a program is initiated, advocates develop in industry, DOD, and the Congress and make it difficult to kill less effective, lower-priority programs.
- Turbulence created by Congressional across-the-board procurement cuts continues to be a problem. The December 1982 CRA affected 280 programs and was a major setback to our progress in program stability.
- A last minute reduction of the FY 1984 DOD topline by $11.3B created additional instability.
- Congressional action thus far in FY 1984 does not bode well for stability.

RECOMMENDED ACTIONS

- This initiative requires DEPSECDEF emphasis.
- The Services and the DRB should implement the Defense Guidance instructions on terminating lower-priority programs, when necessary, in order to fund and keep stable high-priority programs.
- The Services and OSD staff should prepare cost estimates for all FY 1985 major system new starts, and a special DSARC or DRB should be convened in mid-July 1983 to review all FY 1985 new starts.

Initiative No. 5: Capital Investment

This initiative encourages through a variety of mechanisms capital investment by DoD contractors to increase their productivity.

STATUS

Implementation is on track, but further staff action is required.

- A USDRE memorandum to the Services dated 20 December 1982 encourages use of Cost Accounting Standard 409.50(e)(5) to permit advance agreement on shorter capital equipment life for depreciation purposes.
- A test of the Industrial Modernization Incentives Program (IMIP), designed to encourage contractor capital investment was authorized by DEPSECDEF on 2 Nov 1982. The contract incentives being tested include shared savings rewards and contractor investment protection, and are aimed at motivating industry to make productivity enhancing investments.
- Flexible progress payment procedures and increased progress payment rates have been implemented through USDRE(AM) letter dated 28 August 1981, and are incorporated in DAR E-530. Expedited paying cycle is required by OMB Circular A-125. The USDRE(AM) and USD(C) policy letters implementing this circular require specified due dates in contracts and mandate that bills not be paid earlier or later than the due date.
- The DAR Pricing Subcommittee is completing its work on revising the Economic Price Adjustment coverage.
- Negotiation of profit levels commensurate with risk is required by USDRE(AM) memorandum dated 19 June 1981.
- Program funding for the manufacturing technology program for FY 1984-88 has been doubled over that of FY 1979-83. A scope of work for a manufacturing technology information analysis center has been prepared. Work on a tri-service manufacturing technology data base is underway. A draft of DODI 4200.15 "Manufacturing Technology Program" has been through one formal review, and is being refined based upon the comments received.
- DOD Authorization Act of 1982, signed 1 Dec 1982, repealed the excess profit provisions of the 1934 Vinson-Trammell Act.

RECOMMENDED ACTION

- OSD and the Services should continue to actively encourage and support the test of the Industrial Modernization Incentives Program which is underway. USDRE should report progress on the program to the DEPSECDEF quarterly.

- The Services and OSD must continue to assure that DSARC and PPBS reviews enforce DOD affordability policy (promulgated in DODD 5000.1).
- In response to the Defense Guidance, a study on improved planning for program stability should be undertaken.
- An attempt should be made to convince Congress of the need for greater program stability.
- DEPSECDEF should appoint a small, high-level OSD-Service team to identify marginal programs to be used as offsets during the POM review cycle in order to preclude offsets being taken from program stretchouts.

Initiative No. 6: Budget to Most Likely Cost

This initiative is designed to achieve realistic defense acquisition budgets, reduce apparent cost growth in weapon systems, and achieve greater program stability.

STATUS

Further high-level effort is needed to assure full implementation.

- Program managers are now required to consider independent cost estimates in developing their budget estimates and to justify use of an estimate lower than the independent estimate.
- Service Secretaries are required to provide an explanation of any decision leading to a choice of a budget based on the lowest estimate (independent or program manager's), and to provide plans for ensuring the lower budget is met.
- Ten programs (F-15, AIM-54C, F-16, LHD-1, AV-8B, Bradley IFV, Pershing II, NAVSTAR, DIVAD, and AMRAAM) were selected by OSD for special review and evaluation of independent cost estimates in 1982.
- For 1983, independent cost estimates for the budget review will be expanded to 25 programs (ALWT, DDG-51, AV-8B, Trident D-5, Tomahawk, MK-48 ADCAP, NGT, Combat IFF, Lantirn, C-5B, ALCM, Maverick, OTH-B, AMRAAM, MILSTAR, CBU-87, MCS, Sincgars, DSWS, Stinger, MLRS, Pershing II, Abrams tank, AFATDS).
- Significant funds (greater than $2B) were added to the FY 1984 budget to reflect CAIG estimates on the F-15, F-16, F-18, UH-60, and AMRAAM programs.
- Implementation has been hindered by: program instability resulting from DOD decisions and Congressional direction; changing threat or new technology that requires system changes; and, optimistic cost projections on the part of sponsoring acquisition organizations.

RECOMMENDED ACTION

- This initiative should become part of "Realistic Budgeting" for continuing DEPSECDEF emphasis.
- Continue the requirement to submit independent cost estimates with Service POM's for selected programs.

o DoD Contract Finance Committee should continue its work on milestone billings by drafting a DAR case and submitting it to the DAR Council. The DAR Council should publish the material after receipt from the Contract Finance Committee.

*o The DAR Council Contract Administration Subcommittee and Pricing Subcommittee should continue efforts to revise DAR coverage on the expedited paying cycle to implement USDRE(AM) policy direction of 4 January 1983 and ASD(C) policy director of 1 February 1983, and forward it to the DAR Council for approval and publication.

*o The DAR Council's Pricing Subcommittee should complete its work on Economic Price Adjustment coverage by May 1983.

*o The DAR Council should review and implement the revised Economic Price Adjustment coverage by 31 December 1983.

o USDRE(AM) should take the lead in establishing a tri-Service manufacturing technology data base by June 1984.

o USDRE(AM) should revise and publish DODI 4200.15 by December 1983.

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*Dates listed may be slipped due to the DAR Council's dedicated involvement in the executive review of and transition to use of the Federal Acquisition Regulation, effective date 1 April 1984 as mandated by the President's Executive Order #12352.

Initiative No. 7: Economic Production Rates

This initiative involves buying weapon systems at a rate that assures economical production and reduces unit cost.

STATUS

Further high-level effort is needed to assure full implementation.

- A concerted effort was made in conjunction with the FY83 budget submittal to accelerate to more economical production rates (EPRs). Eighteen programs were increased above the Carter FYDP at an estimated savings of \$2.3B. (Estimated savings are calculated by comparing the unit cost of each program at its previous rates to the cost of the same number of items procured at the higher rates.)
- In addition to the savings, higher production rates result in delivering more materiel to the field.
- By virtue of the FY84 budget submittal, the \$2.3B savings is now estimated to be \$2.6B despite a tighter budget projection in the out-years. The T-34C and a number of army ammunition lines were accelerated, however, 2 of last year's programs dropped from the list (the SH-60B LAMPS and the AN/BQQ5 Sonar).
- In the FY 1984 budget process, however, 30 out of a total of 53 major programs were stretched. Reasons for stretches include technical problems, the need to match FY 1983 Congressional reductions, fiscal constraints, and "too many" programs. This is true even though nine were restored to more efficient production rates during the Program Budget Decision process.
- To further promote the capability to achieve EPRs, greater emphasis is being placed on obtaining a producible design during engineering development, thereby easing the transition to production. Increased or greater consideration will be given to contractors' production capability and proposed producibility efforts in making source selections.

RECOMMENDED ACTION

- This initiative requires continuing DEPSECDEF emphasis.
- DoD should continue to examine the stability and economy of production rates in the PPBS.
- DEPSECDEF should direct termination of lower-priority programs identified for the DRB during the POM review process, if necessary to fund fully the remaining higher-priority programs. If this is not done, the task will be left to the Congress, with results (stretchouts) similar to last year.
- DoD should facilitate the transition to production by concentrating on Producibility Engineering and Planning (PEP). DSARC reviews should insure that proper planning and funding is included in development efforts to achieve a producible product.

Initiative No. 8: Appropriate Contract Type

This initiative balances program needs and cost savings with a realistic assessment of contractor and government risk by insuring the use of the appropriate contract type.

STATUS

Implementation has been essentially completed.

- SECDEF letters have been issued emphasizing selection of appropriate contract type to ensure equitable distribution of risk between the government and the contractor.
- Caution is being exercised not to use firm fixed-price contracts to project a degree of confidence and certainty that may be unwarranted (e.g., in R&D efforts). Reliance on a specific type of contract (i.e., fixed-price) does not lessen the need for effective program management. Normally, a cost reimbursable type contract is appropriate for R&D; and a fixed-price type contract for production. Fixed-price incentive contracts are usually needed for early production, with firm fixed-price contracts more appropriate for follow-on production.
- For lead ships of a class which involve significant developmental or cost risk, the use of a cost type contract is appropriate. Fixed price incentive contracts are generally the most appropriate contract type for follow ships; however, the unique circumstances of individual procurements require that each decision be made on a case-by-case basis. For mature shipbuilding programs fixed-price incentive contracts utilizing share lines that place primary emphasis on cost and schedule with motivations for contractor performance above target cost at least as great as those below target cost are considered appropriate.

RECOMMENDED ACTION

- The DSARC should continue to monitor the appropriateness of contract types at its milestone reviews.

Initiative No. 9: System Support and Readiness

This initiative involves establishing readiness objectives for each weapons development program and then designing in reliability and maintainability.

STATUS

Further high-level effort is required to assure full implementation.

- Readiness goals are now part of the design objectives for new systems established at Milestone I.
- Applicable Directives and Instructions (5000.1, 5000.2) have been revised and 5000.39 is in revision to increase the priority of support and readiness in acquisition programs.
- Implementation of this initiative is reviewed in the DSARC process. Recent changes were made in the following DSARC major programs: ASW-SOW, Divad, AH-64, GLCM, LAMPS MK III, ASPJ, Patriot, and M-1 tank to improve readiness and support.
- This initiative is being restructured to include key aspects of initiatives 12, 16, 30, and 31. This will allow us to address readiness objectives, management approach, contractor incentives, front-end test hardware funding, and adequacy of planned support in an orchestrated fashion.
- Cost and schedule pressures continue to dominate the structure and acquisition strategy of most programs. Too little management attention and resources are devoted to structuring the early design and test sequences for achieving R&M and readiness objectives and implementing the most efficient support strategy.
- More work is needed in applying existing analytical tools to relate design and resource decisions to readiness, and to assess the readiness implications of test results.
- Institute for Defense Analysis and Defense Science Board major projects are underway to improve the understanding of what is needed to develop and produce reliable systems.

RECOMMENDED ACTION

- Include initiatives 12, 16, 30, and 31 along with this initiative for continuing DEPSECDEF emphasis under the readiness and support area..
- The DSARC, at each review, should address readiness objectives and management approach, contractor incentives, front-end test articles and funding, and adequacy of planned support.
- MRA&L should periodically assess the Services' progress in applying this initiative to weapon systems by considering R&M success, weapon support implementation, and projected readiness improvement over contemporary systems.

- ASD(C) and MRA&L should implement an improved PPBS capability to better estimate logistic resource requirements, track resources for specific weapons, and monitor execution.
- MRA&L should monitor Service achievement of major advances in the status of improved techniques for readiness modeling, support cost estimating, and application of contractor incentives.
- More Service advocacy is needed; increased front-end attention and funding should be emphasized.
- Greater attention should be paid to review of T&E of support equipment in the Service SARC and the DSARC process.
- Contracts should provide for payment of incentive awards based on attainment of readiness and supportability goals and thresholds, provided there is some assurance that subsequent changes in engineering development prototypes or production systems will not decrease supportability and reliability.

Initiative No. 10: Reduced Administrative Costs

This initiative reduces the administrative cost and time for procuring items by raising the dollar limit on purchase order contracts and cutting unneeded paperwork.

STATUS

Implementation has been essentially completed.

- Threshold authority to negotiate small purchases was raised from $10K to $25K.
- Contractor certificate of cost and pricing data threshold was raised from $100K to $500K.
- Approval for secretarial signature of R&D determination and findings (D&FS) was raised from $100K to $5M.
- The Air Force is testing a process to simplify and reduce paperwork for contracts of less than $500K. This process is complicated by the many statutorily required contract clauses.

RECOMMENDED ACTION

- Action on the original Initiative No. 10 has been essentially completed. A new action item has been initiated to develop a simplified contract format for purchases above the small purchase threshold and under $500K. The Air Force will prepare a final report on this new effort by December 1983.

Initiative No. 11: Technological Risk Funding

This initiative provides for evaluating, quantifying, and budgeting for technological risk.

STATUS

The specific action to develop procedures to budget for technological risk has been implemented by the Services, and this initiative is now considered completed. Continuing action to implement risk funding will be taken under the DEPSECDEF "Realistic Budgeting" area of emphasis.

- The Army and Navy (NAVAIR) have implemented a program known as Total Risk Assessing Cost Estimating (TRACE) to improve their budgeting for technological/program risk. The TRACE program quantifies risk and includes funds in the budget to cover the estimated cost associated with the risk. The risk funds are held at the service headquarters or at command level and distributed to the program manager as needed.
- The Air Force uses techniques similar to the Army's for quantifying risk. However, the Air Force funding for risk is held at the program manager's level.
- The Army and Navy have identified $86.5M in FY84 for this purpose.
- Removal of identified risk dollars during the OSD and Congressional budget review process is a continuing problem.

RECOMMENDED ACTION

- Risk funding should remain part of "Realistic Budgeting" for continuing DEPSECDEF emphasis.
- OSD and the Services should work with the Congressional authorization and appropriation committees to improve Congressional acceptance of risk budget requests. This is an action under "Realistic Budgeting."

Initiative No. 12: Test Hardware Funding

This initiative requires that adequate test hardware be obtained to reduce overall schedule time and risks.

STATUS

Further high-level effort under the Readiness and Support is needed to assure full implementation.

- DEPSECDEF policy memos, dated 6 March 1982 require priority for front-end funding of test hardware.
- Services have instituted procedures to review this provision in their test planning and in POM/budget preparation.
- Implementation is being monitored in DSARC reviews and through approval of T&E Master Plans (e.g., DSARC directed additional test hardware for Army Helicopter Improvement Program and ASW Standoff Weapon).
- DoD attitudes about test and evaluation (T&E) continue to be an impediment. Many people involved in the acquisition process take for granted that weapon systems will work as advertised and regard T&E as a wicket to be passed, rather than a tool in the acquisition process. Some program managers may be overly optimistic about their ability to solve technical problems when faced with poor weapon system test results.

RECOMMENDED ACTION

- This initiative should be included with the Readiness and Support area for continuing DEPSECDEF emphasis. It is recognized that this initiative is broader than readiness and support hardware; however, when test assets are inadequate, the support parameters are usually the ones not tested.
- USDRE should be alert at DSARC reviews to the need to increase test hardware.
- D,DT&E should include this initiative in a revised version of DODD 5000.3, to be completed by December 1983.

Initiative No. 13: Acquisition Legislation

This initiative calls for a review of acquisition-related laws and regulations to identify and change those which are an unnecessary burden on the DoD acquisition process.

STATUS

OSD has forwarded its recommendations to OMB and the Department of Labor, and is awaiting action.

- o A few examples of these recommendations include:
  - Amending 13 statutory thresholds to $25K to align these with small purchase negotiation authority and permit use of simplified small purchase procedures.
  - Amending the Armed Service procurement act to authorize negotiation for "second sourcing."
  - Amending Walsh-Healy Public Contract Act - contract work hours and safety standards act to permit a 4-day, 40 hour week without premium overtime compensation.

RECOMMENDED ACTION

- o DUSD(AM) should continue to review the status of these legislative initiatives.
- o DUSD(AM) should review the overall DoD acquisition process to determine if additional legislative initiatives are needed.
- o ODUSDRE(AM) and OGC should monitor legislative initiatives which would retard or impede implementation of the acquisition initiatives (i.e., dollar thresholds for certification and audit, multiyear procurement, synopsizing, etc.) to ensure timely and appropriate DoD comment.

Initiative No. 14: Reduced Number of DoD Directives and Eliminate Non Cost-Effective Contract Requirements

This initiative requires a reduction in the number of DoD acquisition directives and the amount of contract documentation, and non cost-effective contract requirements..

STATUS

Progress is being made, but more staff action is required.

- An OSD, Tri-Service, NSIA/AIA group completed a review of 132 acquisition-related DOD Directives. These reviews resulted in recommendations to cancel a total of 31 DOD acquisition-related directives (23% of the directives reviewed). Ten directives have been deleted thus far (DODD's 4105.55, 5230.3, 5230.4, DODIs 2140.1, 4105.65, 4500.41, 5000.22, 5000.32, 5100.38, 7720.16). Target dates are being identified for deletion of the remaining directives.

- Focus is now being placed on reduction of contract documentation and non cost effective contract requirements. In January 1983, the USDRE requested that the Joint Logistics Commanders (JLC) select a major system in each Military Department as the basis for a detailed review to identify excessive data and management reporting. Industry input was also sought. The Defense Systems Management College (DSMC) will consolidate results of these reviews and provide recommendations to DUSDRE(AM) by 31 July 1983.

- While a forceful review is being made of existing directives and several have been identified for cancellation, strong follow-up action is required to ensure that these directives are in fact eliminated. Additionally, a thorough requirement is needed to reduce the flow of new directives. For every problem and infraction, there is a tendency to see the need for another directive rather than to seek a solution to the individual problem at hand.

RECOMMENDED ACTION

- DUSDRE(AM) will report to DEPSECDEF on the status of directives recommended for cancellation and on the status of efforts to reduce non cost-effective contract requirements by 30 June 1983.

- The Defense Systems Management College will report to the DUSDRE(AM) by 31 July 1983 on the JLC-industry study of contract documentation and non cost-effective contract requirements.

- DUSDRE(AM) will develop, in conjunction with the Military Departments, an action plan for implementing the JLC/DSMC recommendations by 30 September 1983.

- DUSDRE(AM) will present to DEPSECDEF by 31 December 1983 progress attained on implementing plans to reduce contract documentation and other non cost-effective contractual requirements..

Initiative No. 15: Funding Flexibility

This initiative involves obtaining legislative authority to transfer funds from procurement to R&D for an individual weapon system without the prior approval of Congress.

STATUS

Progress has been made, but further staff action is required.

- The efforts of ASD(C) to obtain an increase in reprogramming authority has resulted in the Congress agreeing to increase the reprogramming threshold for R&D programs from $2M to $4M, and the threshold for procurement and military personnel from $5M to $10M. These increases, approved in December 1981, will allow minor changes to program budgets with reduced administrative effort.
- Efforts are ongoing to establish procedures for DOD approval of the transfer of funds in a given fiscal year from procurement to RDT&E for an individual weapon system when the SECDEF determines that it is in the national interest to do so. Approval of these procedures by Congress is dependent upon the Services providing valid examples of program efficiencies and cost savings which would justify the additional transfer authority.

RECOMMENDED ACTION

- The Services should develop specific examples by 30 June 1983 of program efficiencies and cost savings that might be achieved through additional transfer authority and work with ASD(C) to obtain Congressional approval for transfer authority between the R&D and procurement accounts of weapon systems.

Initiative No. 16: Contractor Incentives for Reliability and Support

This initiative requires that incentives be developed to encourage contractors to improve reliability and support.

STATUS

Further high-level effort under the Readiness and Support area is needed to assure full implementation.

- USDRE guidance was promulgated in August 1981 and policy changes included in revised DODD 5000.39 now in final coordination.
- Services have evaluated their experience with source selection criteria, contract incentives, award fee, etc. The Air Force has established an analysis center for lessons learned which serves as a source of expertise.
- MRA&L and the Services have developed guidelines on front-end logistic support analysis. Recent DSARC guidance on AHIP, ASPJ, Divad, and IR Maverick has put increased emphasis on use of contractor incentives.
- Incentive approaches are difficult to structure and usually add complexity to the contracting process. There has been little technical analysis of the type of incentives that will work best in a given acquisition situation. Each Service has identified a shortage of qualified personnel in this area.
- Some incentives may require the contractor to perform maintenance in the field, or in place of Service depots. The Services generally do not favor such arrangements.

RECOMMENDED ACTION

- This initiative should be included with the Readiness and Support area for continuing DEPSECDEF emphasis.
- The DSARC should continue to closely monitor progress on this initiative.
- USDRE should review the Air Force's experience with the Product Performance Agreement Center and consider expanding it to a joint-Service center.

Initiative No. 17: Decreased DSARC Data

This initiative requires that DSARC briefing and data requirements be reduced.

STATUS

Implementation has been essentially completed.

- Major reductions in the amount of documentation are being made via DODI 5000.2. Paperwork has been cut roughly in half: 5 page MENS replaced by 3 page JMSNS, Milestone Reference File eliminated, 60 page Integrated Program Summary (IPS) eliminated at Milestone I, and cut to 30 pages at Milestone II.
- Arguments persist regarding the need for certain data, such as cost-effectiveness analyses, at all DSARC milestones. In certain cases these data will be essential to defend the need for the program in question, particularly if a Nunn/McCurdy unit-cost threshold is breached and a SECDEF certification is required. When such analyses are not required, care must be taken to assure that resources are not wasted on them.

RECOMMENDED ACTION

- The Defense Acquisition Executive (DAE) should monitor the Services' implementation of DODD 5000.1 and DODI 5000.2, as well as the reasonableness of OSD staff requests for data.
- DAE and the Services should monitor the number of briefings that program managers are required to give in preparation for a DSARC.
- DAE should review the need for cost-effectiveness and other analyses required for DSARC milestones to assure that only essential analyses are performed.

Initiative No. 18: Budgeting for Inflation

This initiative requires that weapon system budgets be prepared using realistic forecasts of inflation.

STATUS

- The specific action to use realistic inflation indices for weapon systems has been accomplished, and this initiative is considered complete. Continuing action to ensure that the inflation indices used in future budgets are as accurate as possible will be taken under the DEPSECDEF "Realistic Budgeting" area of emphasis.
- Prior to FY83 DOD budget used estimates based on GNP deflator.
- Impact of inflation is more severe on DOD than other Federal agencies (highly skilled labor, high technology, and wide use of scarce materials).
- DOD has obtained approval to use special inflation indices for defense commodities developed by Department of Commerce Bureau of Economic Analysis:
  - Indices based on cost histories of weapons and higher inflation experienced.
  - Both FY83 budget and FY84 budget requests, as well as recent SARS, use these more realistic inflation indices.

RECOMMENDED ACTION

- Action to track inflation budgeting should remain part of "Realistic Budgeting" for continuing DEPSECDEF emphasis.
- The Services and ASD(C) should continue to monitor weapon system budgets to assure that proper inflation indices are used.

Initiative No. 19: Forecasting the Business Base

This initiative entails maintaining a data exchange covering business base conditions at major defense plants for use by the Services in planning and budgeting.

STATUS

Implementation has been essentially completed.

- The Cost Analysis Improvement Group (CAIG) has established a central repository for business base information for individual defense plants.
- The Military Services have begun submitting business base estimates directly to the CAIG, which in turn is making this information available throughout DOD for use in planning acquisition strategy and developing realistic cost estimates.
- DPA&E has developed the defense economic impact modeling system to aid business forecasting by industry. The market potential for basic commodities (e.g.; steel, aluminum) is projected.

RECOMMENDED ACTION

- The Services and D,PA&E should periodically review how the Services are using the data exchange in their planning and budgeting.

Initiative No. 20: Improved Source Selection Process

This initiative places added emphasis on contractors' past performance, schedule realism, facilitization plans, and cost credibility. It requires that a system be established for documenting and sharing information on contractor performance.

STATUS

Implementation is proceeding, but further staff action is required.

- The DOD Source Selection Directive, DODD 4105.62, is being revised so as to be consistent with current recognized procedures and to emphasize contractor past performance and realism and credibility of cost estimates as source selection criteria. The revised directive is scheduled to be complete in December 1983.

- There are legal ramifications of considering past performance in a context other than responsibility determinations.
- The revised DoDD 4105.62 will separate the responsibility determination from relevant and recent examples of past performance that can be used as predictors of future performance under a specific proposal. In this way past performance can be used to assess the realism of the contractor's proposal. Relevant past performance is that which is in the same product area (for example, propulsion, guidance, or sensors) and by the same organizational element as the one in the proposal. The objective is to incorporate this new requirement in the source selection directive without creating excessive requirements for additional proposal material and source selection reviews.

RECOMMENDED ACTION

- USDRE should revise and publish DODD 4105.62 by December 1983.

Initiative No. 21: Standardization of Operational and Support Systems

This initiative requires the development and use of standard operational and support systems to achieve earlier deployment and better support of weapon systems. The benefits are increased force readiness and support.

STATUS

Implementation is on track, but further staff action is required.

- Defense FY83/84 standardization guidance systems has been issued that asks the Services to concentrate on high payoff technology areas and on issues inhibiting Initiative No. 21.
- Service implementation is moving slowly -- particularly with respect to the issuance of Military Department guidance to the field.
- Several specific elements of major programs have been standardized (e.g., MIL-STD 1750 processors in B-1B, F-16/F-18 standard flight data recorders, standard inertial navigation on F-16 and A-10, and standard central air data computer for many different Air Force and Navy aircraft).
- OSD has tasked the Defense Materiel Standardization and Specification Board (DMSSB) to address issues surrounding standardization including: funding, the need for commodity panels, and the implementation of standardization guidance. The funding of standardization projects remains a critial issue. GAO is investigating this issue.
- DARPA, OUSDRE(RA&T), OUSDRE(TWP), and DMSSO are working to better coordinate the approval of 6.3A/6.3B RDT&E projects before they are moved to 6.4 RDT&E status. This focuses standardization at the front-end of RDT&E.
- New emphasis has been placed on standardization of TDME, (FSC 6625). Reductions of 70% to 80% have been achieved in the variety of some types of test equipment.

RECOMMENDED ACTION

- The Assistant Secretaries of the Military Departments should focus attention on this initiative to ensure standardization is facilitated where appropriate.
- USDRE should use the DMSSB as the focal point for assessing programs and recommending management improvements that are needed to more effectively support standardization guidance and report on progress made by October 1983.
- USDRE should complete a study on the structure and influence of the standardization organizations by December 1983.

- USDRE, MRA&L, and the Services should convene a panel on support and test equipment to review Service progress in developing standard support systems, and should devise a recommended DoD program.

- USDRE has developed an action plan to address each of the major issues raised at the 1981 DoD standardization seminar. The Services should develop action plans that support USDRE action plan.

- The Services should identify, fund, and develop a coordinated action plan to implement specific standardization projects that result in common operational and support systems.

- USDRE should review the Services' standardization project during the POM process.

Initiative No. 22: Design to Cost Contract Incentives

This initiative requires that DoD provide appropriate incentives to industry by tying award fees to actual costs achieved during early production runs.

STATUS

Implementation will require further strong action.

- DOD Directive 5000.28 (now DoDD 4245.3) was revised on 6 April 1983 to provide a better relationship between the DTC goals, the associated rewards paid to contractors for achieving them, and the actual cost of production.
- Trade off latitude between production cost, life cycle cost, technical, and operational and support parameters will be emphasized; and goals will be adjusted for threat changes or because of other changes such as production rate, etc.
- The Air Force is developing a Military Standard for design-to-cost, which will provide a standard reporting format to be used in contracts with design-to-cost requirements.

RECOMMENDED ACTION

- The provisions of the revised DoDD 5000.28 (DoDD 4245.3) should be incorporated in every program and should be enforced at Service SARC's and DSARC's.

Initiative No. 23: Implementation of the AIP

This initiative assigns overall responsibility to USDRE to assure that the Acquisition Improvement Program is implemented.

STATUS

Implementation has been emphasized since the AIP was established in April 1981. This report indicates directions for future implementation.

- Implementation of the initiatives package has been considered one of the initiatives from the beginning.
- USDR&E has been given overall responsibility, and the DUSD(AM) has chaired an Acquisition Improvement Program (AIP) Steering Group comprised of the Services and principal OSD staff members concerned with these areas.
- Policies have been established. DODD 5000.1 and DODI 5000.2 have been revised.
- The Joint Logistics commanders of the 3 Services have been used to spearhead the effort to make sure the working levels in the development organizations implement this package.
- Several reports have been written, of which this is the latest.
- Initiatives are being prioritized to identify those:
    - a) For increased emphasis and the personal attention of DEPSECDEF.
    - b) Which are completed and can be "closed out."
    - c) For staff level monitoring and additional effort.

RECOMMENDED ACTION

- Part III of this report details recommended actions for this initiative.

Initiative No. 24: Decision Milestones

This initiative requires that DODD 5000.1 and DODI 5000.2 be revised to reflect a reduction in the number of DSARC milestones.

STATUS

Implementation has been essentially completed.

- DoD Directive 5000.1, "Major Systems Acquisition," was reissued in March 1982 and DoD Instruction 5000.2, "Major Systems Acquisition Procedures," was reissued in March 1983.
- DSARC milestones have been cut from 4 to 2 in order to streamline the DSARC process. Milestone "0" is part of budget process per Initiative 25 and Milestone III is normally delegated to Services.
- DSARC Milestone II timing is now flexible (i.e., either start of full scale engineering or at early design review). Whenever the timing of the Milestone II is decided, it is ensured that the program manager briefs OSD and the Service SARC in close time proximity.
- Eight programs have had Milestone III production decision delegated (KC-135 re-engining, Tomahawk, Inertial Upper Stage, Space Shuttle Utilization, HELLFIRE, MLRS, Patriot, M-1). Going beyond the above streamlining, we have also delegated three Milestone I reviews (DDG-51, AHIP, and Sincgars radio) and one Milestone II (Next Generation Trainer).
- Informal program reviews rather than DSARC milestones have been used 16 times (AIM-7M, F-18 (twice), Space Defense, SOTAS, ALWT, CX, M-1, LAMPS, DSCSIII, Patriot, GLCM, ASPJ, IR Maverick, Seek Talk, JVX).

RECOMMENDED ACTION

- DAE should identify any difficulties associated with the new Milestone II or any other aspects of DoDD 5000.1 and DoDI 5000.2.

Initiative No. 25: Mission Element Needs Statement

This initiative links the acquisition and PPBS processes by requiring the MENS to be submitted with the Service POM.

STATUS

Administratively, this initiative has been completed; however, the new starts review process is a vital part of Initiative No. 4, Program Stability.

- New starts are now approved as a part of the PPBS process. This integrates Milestone "0" of the acquisition process with the PPBS process. Fifteen FY83 major system new starts were approved and four disapproved using the new process.
- Ten programs were reviewed in the FY 84 budget submission process (Anti-Tactical Missile, SHORAD Command and Control, RATTLER missile, Follow-on Fighter (VFMX), Vertical Launch ASROC, CV helicopter (SH-60F), Modular Integrated Radar System, Space Surveillance, Advanced Tactical Reconnaissance Systems, Higher Energy Upper Stage).

RECOMMENDED ACTION

- Integration of the Major System New Starts review process into the PPBS has been completed, however, the following actions are recommended as part of the DEPSECDEF emphasis on program stability.
  - USDRE, with appropriate DSARC staff, should prepare estimates of total program cost for all FY 1985 major system new starts based on POM 85 (see Initiative #4, Program Stability).
  - A special DSARC or DRB should be convened in July 1983 to review all POM 85 major system new starts and to make recommendations to the DRB on these new starts.

Initiative No. 26: DSARC Membership

This initiative adds the appropriate Service Secretary or Service Chief to DSARC membership.

STATUS

Implementation has been completed.

- Service Secretaries of the Service sponsoring the program are now DSARC members. Services have participated as full DSARC members in 22 DSARC meetings since April 1981 decision.

RECOMMENDED ACTION

- No further action is needed.

Initiative No. 27: Acquisition Executive

This initiative retains USDRE as the Defense Acquisition Executive

STATUS

Implementation has been completed.

RECOMMENDED ACTION

- The DAE should monitor the major systems that are subject to the DSARC process to ensure continued compliance with the spirit of this initiative.

Initiative No. 28: DSARC System Criteria

This initiative increases the criterion for DSARC review to $200M RDT&E and $1B procurement in FY 1980 dollars.

STATUS

Implementation has been completed.

- The threshold has been increased to $200M R&D and $1B production (in FY80 dollars). Ten DSARC programs were delegated to the Services in June 81 because of this new threshold: LVTX, PLSS, CNCE, RATTLER, FLMC, AIM-7M, SURTASS, LCAC, IWD MINES, AND VCX. The new threshold is used to determine those new systems requiring review by the DSARC.

RECOMMENDED ACTION

- The DAE should monitor the major systems that are subject to the DSARC process to ensure continued compliance with the spirit of this initiative.

Initiative No. 29: DSARC/PPBS Integration

This initiative links the DSARC and the PPBS processes.

STATUS

Administratively, this initiative has been completed; however, the new starts review process is a vital part of Initiative No. 4, Program Stability.

- Initiative 25 has successfully integrated DSARC and PPBS at Milestone "0".
- Any affordability issues at subsequent milestones are brought to the attention of the DSARC by considering what is funded in the latest POM or budget (five year defense plan).
- POM and budget reviews consider whether the planned programming or budget actions are consistent with DSARC guidance for program in question.
- The decision makers in the DSARC and PPBS are essentially the same, thereby assuring better integration between the acquisition process and the budget process.

RECOMMENDED ACTION

- As part of the ongoing emphasis on the program stability, the Services and OSD must continue to insure that:
  - DSARC reviews consider affordability in the budget.
  - POM and budget reviews consider latest DSARC guidance.

Initiative No. 30: Program Manager Control Over Logistics and Support Funds

This initiative requires that logistics and support resources be shown in the Service POM by weapon system, and program managers be given more control of support resources.

STATUS

Further high-level effort under the Readiness and Support area is required to assure full implementation.

- PPBS procedures were developed and implemented on a trial basis to identify more clearly the support funds budgeted in 1982 for 3 systems per Service (M-1, UH-60, MLRS, F/A-18, Aegis Weapon System, Tomahawk, GLCM, NGT, and European Distribution System).
- Improvements to Service data systems were identified and are being pursued.
- This initiative on budget visibility of requirements and funding for support of major systems in early production will be applied to an expanded number of systems in the FY85-89 budget review and has been incorporated in POM preparation instructions.
- Implementation is hampered by procedures, responsibilities, and data systems that are geared toward management of support funding by functional category rather than by weapon system.

RECOMMENDED ACTION

- This initiative should be included with the Readiness and Support area for DEPSECDEF emphasis.
- The Services should complete implementation of Initiative 30 on all systems, with particular attention to giving program managers more of a coordinating role.
- The Services should fully fund support and readiness requirements for new weapon systems.
- The ASD(MRA&L) should review the adequacy of initial support funding for weapon systems in POM 85 and summarize the results for the DRB.
- The joint OSD-Service Support Acquisition Requirements and Cost Methodology Improvement Group should identify (by December 1983) high-leverage approaches to improve initial support data bases and estimating techniques.
- The Services should take the lead in studying ways to implement these approaches, and should report their finding to MRA&L and PA&E by June 1984.
- A high-level examination of accounting procedures is required to deal with the need to manage support funding by weapon system rather than by functional category.

Initiative No. 31: Improved Reliability and Support

This initiative involves improving reliability and support for shortened acquisition cycle programs.

STATUS

Further high-level effort under the Readiness and Support area is required to assure full implementation.

- Implementation is being reviewed in the DSARC process. Recent changes were made in the following DSARC major programs: Divad, AH-64, GLCM, ASPJ, AHIP, and AMRAAM.
- Applicable Directives and Instructions (5000.1 and 5000.2) have either been revised or are in final coordination (5000.39).

RECOMMENDED ACTION

This initiative should be included with the Readiness and Support area for DEPSECDEF emphasis.

Initiative No. 32: Competition

This initiative is designed to enhance competition in the acquisition process in order to reduce cost.

STATUS

Further high-level effort is required to assure full implementation.

- DOD policy (stemming from the Armed Services Procurement Act) is that all procurements shall be made on a competitive basis to the maximum practicable extent (DAR 1-300). SECDEF in his recent letter of 9 Sept 1982 further reinforced this initiative and requested a commitment to increase competition by all personnel involved in the acquisition process.

- To enhance competition, the Services and DLA have been directed to: 1) designate advocates for competition, 2) ensure commanders understand their responsibility, 3) establish goals for competition, 4) place special emphasis on planning for competition, and 5) publicize significant achievements.

- We are currently emphasizing early planning to introduce competition in the development and production phases when appropriate (high front-end investment). New techniques are being employed in this area, such as leader/follower and various teaming arrangements. Examples of second sourcing are the AIM-7M and HELLFIRE missile programs, and planning is underway on the F-15/F-16 engine and AMRAAM program.

- Second sourcing can be introduced at the subcontractor level in addition to the prime level. Current examples are rocket motors for Pershing II, TOW, Chaparral, and AIM-9M missile programs, F-16 canopy, ACES II ejection seat, and GAU-8 gun and ammo. Planned examples are Bradley Fighting Vehicle ammo, and target detecting device for Phoenix, Maverick, and MX.

- The requirement for near-term resources at the Service-Defense Agency level to develop additional qualified sources for supplies and services continues to be a problem.

- There remains the perception in some segments of industry and the DoD technical community that this initiative may result in our competing contracts without properly weighing the risk to successful program completion.

- The DAR Council review of DAR Case 79-42 on development of additional sources has been delayed due to FAR implementation.

- The availability of adequate technical data packages for the reprocurement of spares, components, and parts continues to be a problem. The apparent conflict between DAR policy on patent and data rights and the use of technical data for competition needs to be resolved.

- OSD has requested a legislative change to establish a negotiation exception for developing a second source.

RECOMMENDED ACTION

- This initiative requires continuing DEPSECDEF emphasis.
- DUSDRE(AM) should continue to work with the Services to set challenging goals for competition and emphasize the role of competition advocates to meet those goals.
- DUSDRE(AM) should assist in identifying and eliminating barriers to effective competition.
- DUSDRE(AM) should insure competition is considered in the acquisition strategy of all programs reviewed by DSARC.

PART II: IMPLEMENTATION OBJECTIVES

Initiatives Essentially Completed

The following initiatives are either completed, working well or essentially completed such that only some monitorship is required. They are well on their way to becoming institutionalized, only periodic review should be necessary in the future to see that the intended objectives are accomplished, and that they remain an integral part of the way DoD does business.

1. Management Principles
8. Contract Type
10. Reduced Administrative Costs
11. Technological Risk Funding
17. Decreased DSARC Data
18. Budgeting for Inflation
19. Forecasting the Business Base
24. Decision Milestones
25. MENS in the POM (administratively complete but part of No. 4, Program Stability)
26. DSARC Membership
27. Acquisition Executive
28. DSARC System Criteria
29. DSARC/PPBS Integration (administratively complete but part of No. 4, Program Stability

Further Action Required

The following initiatives still require specific future action before they become institutionalized. In many cases significant progress has been made already, but there remain definitive milestones not yet met to insure proper implementation.

	Service Action*	OSD Action*
2. Pre-Planned Product Improvement (P^3I)	x	x
5. Capital Investment	x	x
13. Acquisition Legislation		x
14. Reduced Number of Directives		x
15. Funding Flexibility	x	
20. Improved Source Selection Process		x
21. Standard Operational and Support Systems	x	x
22. Design to Cost Contract Incentives	x	x
23. Implementation		x

*Specific actions are addressed below and in the body of the year-end report.

Initiatives Requiring Special DEPSECDEF Emphasis

The last group of initiatives includes those for which special DEPSECDEF attention and emphasis is required. The six major areas listed below promise significant cost savings but are also the most challenging of the Acquisition Improvement Program Initiatives. Primary implementation responsibility for the consolidated initiatives remains with the Services and with selected OSD staff offices having normal functional responsibilities in these areas. For example, in the area of realistic budgeting, the Services take primary action to insure realism in POM and budget submittals. The cognizant OSD offices (OSD (Comptroller) and the Cost Analysis Improvement Group in this case) provide review during the normal PPBS sequence. For purposes of providing DEPSECDEF review and oversight, implementation working groups with high-level representatives from the Services and appropriate OSD offices will report to the Council on Integrity and Management Improvement periodically (or quarterly) for each of the six areas selected for DEPSECDEF emphasis.

Organizational Responsibility for Implementing Areas Requiring DEPSECDEF Emphasis

			Service Member(s)		
Working Group	Chairman	Other OSD	Army	Navy	Air Force
Program Stability	D,PA&E	USDRE			
Multiyear Procurement	ASD(C)	USDRE			
Economic Prod. Rates	USDRE	D,PA&E			
Realistic Budgeting	ASD(C)	CAIG			
Readiness & Support	ASD(MRA&L)	USDRE			
Encouraging Competition	USDRE	DLA			

Each of these six areas requires Service and OSD action (current actions are addressed below and in the body of the report) as well as DEPSECDEF emphasis for implementation. These areas have proven to be the most intractable in the past and for this reason, are the ones to receive the greatest attention from this point. Each working group is required to identify detailed action plans and milestone dates (in addition to those current actions listed below).

Implementation Actions

The body of the year-end report recommends the following specific actions:

Initiative	Responsible Office	Deadline Date
2. Pre-Planned Product Improvement (P^3I)		
- Review P^3I content in FY83 and FY84 major system new starts.	USDRE/Services	July 1983
- Continue DoD review of P^3I in FY 85-89 POM process, focusing on FY 85 new starts.	USDRE/Services	July 1983
- Ensure adequate front-end funding for P^3I	Services/ASD(C)	Near-Term (6 months)

Initiative	Responsible Office	Deadline Date
3. Multiyear Procurement (MYP)		
- Work to convince Congress to alter restrictions on MYP in the FY 83 Appropriations Act	USDRE/ASD(C)	Intermediate (6-12 mos.)
- Continuing emphasis to identify multiyear candidates during FY85 POM Budget cycle and future.	ASD(C)/ USDRE*/ Services	Intermediate (6-12 mos.) and Long-Term (12 mos.)
- Collect data on actual savings.	Services/OSD	N/A
4. Program Stability		
- Continuing emphasis during PPBS process, including the termination of lower-priority programs in order to fund and keep stable higher-priority programs.	D,PA&E*	Continuing
- Prepare "ballpark" cost estimates for all FY 85 major system new starts	Services/OSD	Near-Term (6 months)
- Convene special DSARC or DRB to review FY85 major system new starts	DSARC or DRB	Near-Term (6 months)
- In response to Defense Guidance undertake a study on improved planning for program stability which will identify procurement bow wave problems and offer alternative courses of action for dealing with them.	USDRE/Services	Intermediate (6-12 mos.)
5. Capital Investment		
- Publish interim acceptance standards for Milestone Billings	DAR Council	60 days after receipt from contract finance committee
- Publish DAR coverage on the expedited paying cycle	DAR Council	60 days after receipt from subcommittee
- Review and implement revised Economic Price Adjustment coverage	DAR Council	60 days after receipt from subcommittee
- Establish tri-Service manufacturing technology data base	USDRE(AM)	June 1984
- Revise and publish DoDI 4200.15, "Manufacturing Technology."	USDRE(AM)	December 1983

Initiative	Responsible Office	Deadline Date
- Support technical data rights coverage in the FAR	DoD	31 December 1983
- Analyze progress in the OSD/tri-Service Industrial Modernization Incentives Program and identify for further emphasis those incentives proving most successful.	Services/DLA/ USDRE	Intermediate (6-12 mos.)
- Emphasize in testimony to Congress, the need for greater program stability and the penalties for stretchouts.	USDRE/ Services	Intermediate (6-12 mos.)
6. Budget to Most Likely Cost		
- Continuing emphasis during PPBS and acquisition processes.	ASD(C)*	N/A
- Continue the requirement to submit independent cost estimates with Service POMs for selected programs.	Services/CAIG	N/A
7. Economic Production Rates		
- Continuing emphasis during PPBS and acquisition process reviews.	USDRE*	N/A
- Facilitate the transition to production by concentrating on Producibility Engineering and Planning at all DSARC reviews.	USDRE/ Services	N/A
9. System Support and Readiness		
- Continuing emphasis during PPBS and acquisition process reviews.	ASD(MRA&L)*	N/A
- Assess R&M successes and projected readiness over contemporary systems.	ASD(MRA&L)	N/A
- Implement improved PPBS capability to better estimate logistic support requirements, track resources for specific weapons, and monitor execution.	ASD(MRA&L)	Intermediate (6-12 mos.)
-Address readiness objectives and management approach, contractor incentives, test	ASD(MRA&L)/ USDRE	N/A

Initiative	Responsible Office	Deadline Date
articles and funding, and adequacy of planned support at all DSARC reviews.		
- Increased front-end attention and funding.	Services	N/A
11. Technical Risk Funding		
- Continuing high-level emphasis as part of "Realistic Budgeting."	ASD(C)*	N/A
- Monitor status of TRACE during PPBS and report to DRB when appropriate.	ASD(C)/ Services	N/A
- Agree on procedures for justifying risk dollars in budget submission.	ASD(C)/ Services	N/A
- Work with Congressional Committees to improve Congressional acceptance of risk budget requests.	ASD(C)/ Services	N/A
12. Test Hardware Funding		
- Continuing high-level emphasis as part of "Readiness and Support."	ASD(MRA&L)*	N/A
- Revise DODD 5000.3 to require that adequate test hardware is obtained to reduce overall schedule time and risk.	D,DT&E	December 1983
13. Acquisition Legislation		
- Review overall DoD acquisition process to determine if additional legislative changes are required to reduce unnecessary burden on DoD.	DUSD(AM)/OGC	Long-Term (12 months)
14. Reduced Number of Directives		
- Prepare report to DepSecDef on status of directives reccommended for cancellation and efforts to reduce non cost effective contract requirements.	DUSD(AM)	30 June 1983

Initiative	Responsible Office	Deadline Date
- Report to DUSD(AM) on the JLC-Contractor study of contract data requirements.	DSMC	31 July 1983
- Develop an action plan for implementing DSMC recommendations.	DUSD(AM)	30 September 1983
- Present progress report on implementing plans to reduce contract deocumentation and other non-cost-effective requirements to DepSecDef.	DUSD(AM)	31 December 1983
15. Funding Flexibility		
- Develop specific examples of program efficiencies that might be achieved through additional funds transfer authority.	Services	30 June 1983
- Obtain Congressional approval for funds transfer authority between the R&D and procurement accounts of weapon systems.	ASD(C)/ Services	Near-Term (6 months)
16. Contractor Incentives for R&S		
- Continuing emphasis as part of improving Readiness & Support.	ASD(MRA&L)*	N/A
- Review Air Force's experience with the Product Performance Agreement Center and consider expanding it to a joint-Service center.	MRA&L/USDRE	April 1984
18. Budgeting for Inflation		
- Continuing high-level emphasis on more realistic budgeting by using special inflation indices for defense commodities.	ASD(C)*	N/A
20. Source Selection		
- Revise DODD 4105.62 to reflect contractor past performance and realism/credibility of cost estimates as source selection criteria.	USDRE	December 1983

Initiative	Responsible Office	Deadline Date
21. Standardization		
- Examine Service organization structure and its influence on standardization.	USDRE	December 1983
- Convene panel on support and test equipment to review progress on standard support systems.	USDRE/MRA&L/ Services	N/A
- Develop action plan to address issues raised at Nov 1981 DoD standardization seminar.	USDRE/ Services	N/A
22. Design to Cost (DTC) Contract Incentives		
- Revise DODD 5000.28 to provide a better relationship between DTC goals, award fees paid, and actual cost of production.	USDRE	December 1983
30. Program Manager Control Over Logistics and Support Funds		
- Continuing high-level emphasis	ASD(MRA&L)*	N/A
- Review adequacy of initial support funding for weapon systems in POM 85 and summarize results for DRB.	ASD(MRA&L)	Intermediate (6-12 months)
- Identify high leverage approaches to improve data bases and estimating techniques.	OSD/Services	December 1983
- Report on ways to implement these high leverage approaches.	Services	June 1984
32. Competition		
- Continuing high-level emphasis	USDRE*	N/A
- Establish challenging goals for competition and emphasize the role of competition advocate to meet those goals.	DUSD(AM)	N/A
- Identify and eliminate barriers to competition.	DUSD(AM)	N/A

*Because of the nature and importance of the action, the lead OSD office should provide recommended actions or decision packages (supported by data/analyses) coordinated with Sol Love to DepSecDef to accomplish the stated actions.

The matrix below shows the primary areas of implementation action (i.e., staff, DEPSECDEF, Congress). This does not mean that the other areas do not either provide input or participate, but their role is not foremost. The time dimension of near-term, intermediate, and long-term is a subjective judgement and does not necessarily imply that the initiative will be closed out at that time. Some initiatives are of such a nature that they will be ongoing efforts and will never be closed out. The time estimates reflect milestones suggested by the Steering Group.

	SERVICE/OSD STAFF	DEPSECDEF	OMB AND/OR CONGRESS**
Near Term (6 months)	#2 P^3I #5 Capital Investment #14 Reduced Directives #15 Fund. Flexibility #21 Standardization #23 Implementation	#4, 25, 29 Stability #6, 11, 18 Budget Realism #7 Economic Production #9, 12, 16, 30, 31 Readiness and Support #32 Competition	#4 Stability #6, 11, 18 #7 Economic Productio #15 Funding Flexibility #32 Competition
Intermediate (6-12 months)	#5 Capital Investment #12 Test Hardware Funding #14 Reduced Directives #20 Source Selection #21 Standardization #22 DTC Contract Incentives #23 Implementation	#3 MYP #4, 25, 29 Stability #6, 11, 18 Budget Realism #7 Economic Production #9, 12, 16, 30, 31 Readiness & Support #32 Competition	#3 MYP #4 Stability #6, 11, 18 #32 Competition
Long Term (12 months)	#5 Capital Investment #14 Reduced Directives #21 Standardization #23 Implementation	#4, 25, 29 Stability #6, 11, 18 Budget Realism #7 Economic Production #9, 12, 16, 31, 31 Readiness & Support #32 Competition	#4 Stability #6, 11, 18 #13 Legislation #32 Competition

**The interface with Congress is normally on a programmatic basis rather than on individual AIP initiatives.

THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA

25 July 1983

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL
INSPECTOR GENERAL
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Spare Parts Procurement

Our recent audits and investigations of aircraft spare parts accounts demonstrate conclusively that we must make major changes in the way we order and purchase spare parts. The directives we instituted in March 1981 to increase competitive bidding and hold down prices have not been enforced vigorously enough throughout the Defense Department.

To ensure that we are not plagued with pricing abuses in the future we have developed and put in place a ten point program. It is our joint responsibility to see that all civilian and military personnel in the procurement branches of the Department comply with these procedures.

First, we should offer incentives to increase competitive bidding and reward employees who rigorously pursue cost savings. Actions such as the Air Force's recent award of a $1100 bonus to the Air Force sergeant who uncovered excessive overpricing on a spare part should be continued and given your personal attention.

Second, I expect you to take stern disciplinary action -- including reprimand, demotion and dismissal -- of those employees who are negligent in implementing our procedures.

Third, I have directed Deputy Secretary Thayer to work with the Service Secretaries to alert defense contractors to the seriousness of the problem and of our firm intention to keep prices under control. We expect them to ensure that their employees also pursue fair pricing practices by undertaking disciplinary action when necessary or rewarding employees where appropriate. I will carry this message to defense contractors in Hartford, Connecticut in a speech I will give there later this week.

Fourth, now that all of the Services have competition advocates in place in their buying commands, I expect those competition advocates to challenge orders that are not made competitively or appear to be excessively priced and I expect our procurement officers to heed their advice.

Fifth, we simply must refuse to pay unjustified price increases. I know the Air Force now carefully checks price increases on aircraft spare parts. If the price increase is excessive, the Air Force is refusing to pay it. Such efforts are already underway in the other Services and they should continue to receive the highest priority. To assist you in these efforts, the Defense Contract Audit Agency will work with your contract administration offices to strengthen spare parts pricing procedures and to assist in the negotiations of major spare parts purchases.

Sixth, we must accelerate reform of our basic contract procedures. The Inspector General's recent investigations underscore the importance of reforming our basic contract procedures to encourage competition, preclude overpricing and, as an added insurance, give us the legal right to recover excessive payments.

For example, many of our existing basic ordering agreements routinely carried a price redeterminable clause which allowed the manufacturer to set the price for repeat orders of spare parts. You should continue to phase out existing portions of ordering requirements which allow the manufacturer to redetermine prices and make every effort to obtain firm fixed-price contracts. We must redouble ongoing attempts to increase the number of contracts open for competitive bidding.

Seventh, we must take steps to obtain refunds in instances where we have been overcharged. In those contracts where we have the right to reduce an excessive price and set a more equitable price, we should not hesitate to exercise that right. If we have to, we should sue a contractor to recover unjustified payments. In some cases the contracts we signed may not give us the legal right to a refund. In these instances, the Services and the Department should aggressively pursue refunds through discussions with senior managers of the company similar to those Secretary Lehman is currently conducting with the Sperry Corporation and Gould Simulation Systems Inc. We should convey to them our strong belief that it is in the best interests of both the Department of Defense and the defense industry to have contractors voluntarily refund any payments that are clearly exorbitant and unjustified.

Eighth, where alternative sources of supply are available, we should cease doing business with those contractors who are guilty of unjustified and excessive pricing and who refuse to refund any improper overcharges. If alternate sources, domestic or foreign, are not available, we will do our best to develop such sources rapidly. In December 1982 we significantly strengthened our procedures for suspending and disbarring irresponsible contractors. We should exercise those administrative powers in a timely manner -- within 30 days of indictment or conviction of a contractor.

Ninth, our audits and investigations of spare parts will continue. In addition to the eight audits the Inspector General has already issued, Service auditors have issued some 25 others. The Inspector General has six additional audits in progress, and will begin three others in the next few months. These will focus on the broader ramifications of how we buy spare parts, what we pay for them, and how they are used and controlled once they enter the inventory. In addition to investigating aircraft engine spare parts, we will now look at cost growth in electronic spares and contract adminstration activities.

The *tenth* and final point is that the Defense Department purchases millions of spare parts worth billions of dollars each year. I think you will agree that in the majority of cases we have been satisfied with the quality and prices of those spare parts. The many fine corporations and dedicated employees supporting our nation's defenses should not be maligned as a group for the failures of a few. However, it is our responsibility to ensure that we do not waste one dollar of the taxpayers' money. We must make every effort to eliminate excessive pricing in the future, to recover unjustified payments we have already made, and where necessary, to expose and take appropriate corrective action against those contractors and employees who are either negligent in performing their duties or are engaging in excessive pricing practices.

THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

29 AUG 1983

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL
INSPECTOR GENERAL
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Spare Parts Acquisition

My memorandum of July 25, 1983, announced a ten point program on spare parts procurement. Procurement, however, is but one facet of the problem. While the focus of immediate attention, other aspects of the spare parts total acquisition process must get equal scrutiny. Improvement in all areas is essential. While this memorandum deals primarily with acquisition, attention next will be focused on the requirements process, the authorization and appropriation process, and the way we manage readiness and support.

I am resolved that the Department of Defense act decisively. Nothing short of our full management capability and technical expertise must be applied to this challenge. Our credibility before the Congress and the public is at stake. Accordingly, I am now directing the additional actions set forth below.

In some cases I have designated precise milestone dates. This is addressed in the enclosure, as is further discussion of selected actions. I am asking the Deputy Secretary of Defense, as Chairman of the Defense Council on Integrity and Management Improvement, to take the lead in providing overall guidance and coordinating your efforts. I expect him to monitor our progress.

Near-Term Actions (within 90 days)

o Provide resources to induce desirable breakout, effective competitive procurement, and improved pricing in the acquisition of spare parts.

o Apply the DoD Parts Control Program to enhance competition. The optimum use of standard military parts or commercially available parts in development of new systems will be mandatory.

o Accelerate plans for acquisition of computer hardware and software to assist parts control personnel.

o Institute action to identify disparities in spare parts prices within and among various procuring activities.

- Employ value engineering to investigate spare parts where cost or price exceeds intrinsic value.
- Assign more engineering resources to review new reprocurement data packages for adequacy.
- Develop and test a procedure to make breakout of spare parts a factor in source selection for new major systems. Develop new incentive arrangements to reward contractors for cost savings generated by their efforts.
- Negotiate contract data provisions which, as appropriate, reduce contractors' proprietary rights in data. A DAR deviation is approved for this purpose.
- Designate acquisition of spare parts and reprocurement data as an agenda item in Acquisition Strategy Panels, Advance Acquisition Plans, and Acquisition Review Councils.
- Revise performance evaluation factors for acquisition and logistics managers. Include emphasis on spare parts pricing, breakout, competition, and value engineering accomplishments.
- Implement DAR Supplement No. 6, "Replenishment Spare Parts Breakout Program" upon receipt.
- Consider in all contracts, as appropriate, the Government's right and ability to breakout and procure competitively spare parts.
- Discourage use of government specifications and contractor proposed engineering designs that inhibit subsequent competitive procurement of spare parts.
- Continue action on my "Ten-Point" Program to insure that prices paid for all spare parts are fair and reasonable.
- Pursue appropriate refunds or other recoupments vigorously following any audit or other disclosure of incorrect pricing or overcharge.
- Review existing contracts to fully address any and all opportunities for improved pricing of spare parts, including breakout and competition.
- Instruct acquisition personnel to challenge any procurement action for spare parts where estimated or negotiated price appears unrelated to intrinsic value.

Mid-Term Actions (within 180 days)

- Reexamine existing policy on patent and data rights arising under government funded IR&D.

- Expand training curricula to insure proper emphasis, understanding, and technical skill level for all personnel engaged in the acquisition of spare parts.

- Assign special task forces to review existing reprocurement data packages for spare parts with high annual buy/quantity values.

- Evaluate and make recommendations for changes to existing authorization, appropriation, apportionment, budgeting, and financial management practices, and regulations pertaining to acquisition of spares.

- Pursue with appropriate Congressional Committees and their staffs the merit of a two-year authorization for acquisition of replenishment spare parts and consumables.

- Insist upon contract terms and conditions in all future acquisitions that afford more equitable treatment and provide for greater assurance of fair and reasonable prices.

Long-Term Actions

- Automate data repositories to improve the acquisition, storage, update, and retrieval of reprocurement and technical data.

- Evaluate and assess accomplishments under the near- and mid-term actions for additional policy direction, as appropriate.

I am aware of the burdens these actions impose upon you and your staffs. However, we cannot defer action until such time as additional resources might be authorized and become available. Your full cooperation is appreciated.

Caspar W. Weinberger

Enclosure

OPTIMIZE USE OF STANDARD MILITARY PARTS OR COMMERCIALLY AVAILABLE PARTS IN DEVELOPMENT OF NEW SYSTEMS

The DoD Parts Control Program promotes use of military preferred standard piece-parts during engineering design, development, production, or modification of equipments and major weapon systems. The program fosters standardization, which leads to greater demand for standard parts, reduction in varieties of parts in inventory, resultant increased production runs, and competition through multiple sourcing. It is accomplished through the engineering review of non-standard commercial parts and recommended preferred standard item replacements. DoDI 4120.19, Parts Control Program (PCP), is required in contracts for major weapon systems, end items of equipment where logistics support is required and in which acquisition managers foresee appreciable life-cycle cost savings.

I am directing action to require mandatory application of the DoD Parts Control Program (at the present time approximately 40 percent of weapon system contracts are using the program on a voluntary basis). DoDI 4120.19 shall be revised to reflect the change from a voluntary to a mandatory program.

DLA should proceed with plans for acquisition of computer hardware/software to assist parts control personnel to achieve real time processing. Submission of the DLA plans for accomplishment is directed within 60 days.

GIVE ACQUISITION OF SPARE PARTS THE NECESSARY ATTENTION*

On August 2,1983 I issued a revised regulation (DAR Supplement No. 6) dealing with the breakout of spare parts. It provides procedures for screening requirements for replenishment spare parts to break them away from systems contractors for the purpose of buying them competitively or from the actual manufacturer (breakout). The regulation enhances the cost saving objective of breakout, contains substantive revisions of a number of procedures, and incorporates features that increase the utility of resources devoted to the screening process. You will insure that your personnel immediately implement the designed purpose of this regulation as a matter of highest priority.

USE VALUE ENGINEERING TO INVESTIGATE PARTS WHERE COST EXCEEDS INTRINSIC VALUE

The objective of Value Engineering (VE) is to identify more cost effective alternatives. An effective spare parts value engineering program must include procedures to identify those spares whose price is excessive and appropriate action to reduce unnecessary cost. Accordingly, each DoD component will:

- Within 60 days institute at each spares buying activity procedures to "flag" price disparities in spare part contracts.
- Assign adequate value engineering resources to review spares purchases and reduce excesses. Use ad hoc government VE teams, contract VE services, DoD personnel who currently have VE as a primary or collateral responsibility, and contract teams funded by the VE program clause of the DAR.
- Revise the current Value Engineering Incentive DAR clause for all supply and service contracts of $100,000 or more to mandate its use in contracts less than $100,000 for spare parts. Effective immediately, contracts for spare parts and repair kits of $25,000 or more for other than standard commercial parts will contain a VE incentive clause.

INSURE THAT PRICES PAID FOR PARTS ARE FAIR AND REASONABLE

Offer incentives to employees to increase competitive bidding and reward those who vigorously pursue cost savings. This requires beneficial suggestion/VE award programs specifically tailored to the acquisition of spare parts.

Take stern disciplinary action with those employees engaged in the acquisition process who are negligent in implementing our procedures. Performance in this area should be a scored evaluation factor in performance ratings.

Alert defense contractors to the seriousness of the problem and of our firm intention to keep prices under control. I expect implementation of an ongoing management procedure to insure continuing high level attention to this area. Action shall be taken to insure the high-level contractor management mirrors this effort.

Task Competition Advocates in all DoD components to challenge spares orders not made competively or which appear to be excessively priced. Competition advocates must be provided sufficient authority to intervene directly in instances where policy is not being appropriately implemented. A draft DoD directive on competition advocates will be prepared and distributed for comment within 90 days.

ACQUIRE REPROCUREMENT TECHNICAL DATA UNENCUMBERED BY NEEDLESS OR IMPROPER PROPRIETARY RESTRICTIONS

As part of the evaluation and source selection process, specific consideration will be given to breakout and competitive procurement of spare parts. Our ability, including cost to the Government, to acquire reprocurement data packages with unlimited rights thereto (given the nature and propriety of the prospective contractors' asserted rights) will be evaluated.

Examine and advise me of your views as to existing policy dealing with the rights accruing to the Government under IR&D.

Negotiate firm dates in new contracts by which "unrestricted" use of data encumbered by the contractor's background patents and/or data rights for data initially developed at its expenses will be available. Particular attention should be given to those cases where the Government has borne the major cost of development.

AUTOMATE DATA REPOSITORIES TO IMPROVE THE ACQUISITION, STORAGE, AND RETRIEVAL OF TECHNICAL DATA

With state-of-the-art technology, the automated data repositories can:

- o Eliminate bottlenecks in paper/microfilm manual identification, retrieval, and individual reproduction operations.
- o Reduce the cost of repository operations and the cost of data.
- o Permit direct interface with industry and among the Services in computer-aided design (CAD) and computer aid manufacturing (CAM) systems.
- o Provide for computerized review and inspection, indexing, and verification of "rights in data" claims.
- o Provide for timely identification of the appropriate data and its subsequent delivery to the user or buyer via telecommunications.

The Services will support and fund the ongoing Tri-Service/Joint Committee on Printing effort to acquire and install prototype repositories with a target date for completion of FY 1987. The standard system specification has been defined. Plans to be supported by the Services include, subject to availability of funds:

- o Army. Installation at MICOM and CECOM in September 1984.
- o Air Force. Complement Army contract, and fund in FY 1984 for one system.
- o Navy. Installation at NPFC in September 1984. Approve of the NAVAIR system for implementation at the NAVAIR central repository.

ELIMINATE DISINCENTIVES ON INDUSTRY TO FACILITATE BREAKOUT AND COMPETITION OF SPARE PARTS

What we do up front in the development of major systems and in obtaining adequate reprocurement technical data at the outset of production profoundly influences our ability to break out spare parts for procurement from other sources. Clearly lacking is a motivational response needed from our major systems developers. Absent that, we will have simply modest improvement with no assurance that such improvement will continue. Therefore, we are considering two new efforts.

First, we must make breakout of spare parts a factor in the source selection of a major weapons systems developer. Second, we must couple this with incentive arrangements that provide the contractor a share in cost savings generated by his efforts. Such procedures will be developed for test at the earliest practicable date. These procedures have the potential of assuring long-term application and benefit without the need to increase significantly manpower resources, without substantially adding to acquisition costs, and without unduly prolonging procurement leadtime.

Following is a draft concept paper that discusses this in greater detail. I wish your constructive comments within 30 days with the full intention of designating a joint service and DLA task group to develop a comprehensive test program within 90 days. Full-scale implementation will be accomplished following evaluation.

"DRAFT" CONCEPT PAPER

SUBJECT: Enhancing (1) breakout and (2) competitive solicitation and procurement of both initial and replenishment spare parts for new major systems

PROBLEM: The cost of acquiring the subject parts is increased by any one or a combination of the following:

- existing in-house "cost models" that distort prices paid for spare parts by inappropriately or disproportionately allocating the prime contractor's costs for engineering, manufacturing, material handling, G&A, and plant-wide variances as well as associated overhead charges and profit
- tiering of vendor acquired spare part prices merely flowing through the prime contractor with the latter's overhead and profit
- absence of effective competition for subcontracted items and vendor furnished parts
- proprietary rights, data right, and patent right limitations
- incomplete, inaccurate, and/or obsolete reprocurement data packages
- insufficient procurement leadtime
- dated and/or incomplete knowledge of the industrial base
- institutional biases on the part of industry and government

- incomplete and/or inadequate "make-or-buy" program reviews
- disincentives on contractors to break out vendor acquired parts for direct acquisition by the government
- lack of positive incentives on contractors to break out vendor acquired parts for direct acquisition by the government
- lack of government personnel resources with the appropriate skills and training to get the job done
- lack of high level management attention in industry
- lack of high level management attention in government
- prior course of dealings, industry/trade practices, and tradition
- late apportionment of fiscal year funds for O&M acquisition
- incomplete, untimely, and inadequate acquisition planning
- low volume buys
- disproportionate emphasis on meeting operational requirements

__DISCUSSION__: The spare parts "problem" is not any one problem. It is many problems that vary in type, combination, and impact depending upon:

- the point in time during the acquisition process when the issue is being addressed
- the type, nature, and quantity of the spare parts at issue
- the system that is being supported

There is no one solution. That is not to say, however, there is no solution. The problem area has to be broken down into functionally related components. There are:

- problem(s) that are inbeing
- problem(s) we are presently evolving
- problem(s) that will arise in the future

This concept paper focuses primarily on how to avoid the problems in the future. There is some immediate transference possible, and that is encouraged.

__ANALYSIS__: Any conventional solution is invariably labor intensive. That makes it somewhat less than viable, irrespective of conceptual appeal. A solution to the problem is required that is:

- not labor intensive in terms of government personnel
- predisposed to alter in some meaningful way our traditional approaches
- acceptable to industry, for the problem cannot be solved by the government alone
- cost effective in a way that is readily apparent and demonstrable
- easy to communicate to the acquisition work force, where the rubber hits the road
- not so complex as to be difficult to comprehend or to implement
- susceptible of being implemented within all of DoD with a high degree of uniformity so as to preserve the concept of "one face to industry"
- not too costly, nor should it require substantial investments of program funds to initiate and/or accomplish
- not contrary to the principle of decentralized management and the preservation of decisionmaking authority, flexibility, and discretion at the lowest possible level
- financially beneficial to both industry and government

The solution dictates that it be approached early in the acquisition process while there is still effective competition to assure a reasonable degree of industry responsiveness and reasonable attendant costs. The techniques employed must be compatible with existing acquisition practices and require no new authorities, laws, or regulations. Additionally, it is at the earlier stages of the acquisition process where the leverage of any incentive is greatest because so much of the program is still prospective. The "work" must be accomplished by contractor personnel but not as "services." There must be on-going visibility by high level management in both industry and government. The rewards to industry must be immediate, near term, and long term; all three are required. The same holds true for the government. The rewards enjoyed must not be at the expense of otherwise realizable profits and/or incentive fees in a way that merely reapportions the profit pool. The payoff must be big to attract and to hold the continuing attention of all- -including the Congress and the public. Lastly, implementation in the very near term should be possible.

SOLUTION: All basic tenets must be employed to be effective, but the quantitative measures should be assigned to, or reserved for, the discretion of decentralized management and planned on a case-by-case basis. The basic tenets are:

1. The competition leading to award of FSED for a major system should turn, in part, on the prospective prime contractor's technical and management proposals addressing such things as:

- Make-or-Buy Plan

- Engineering Design in terms of furthering utilization of commercially available components, non-proprietary items, competitively available vendor material, military standard parts

- Management Plan to facilitate:

  - early breakout

  - parallel competitive sources for vendor items

  - accomplishment of the aforementioned engineering design

  - review of technical data packages for completeness, suitability, currency, and relief from inappropriate proprietary restrictions

  - enhancement of the competitive vendor base and the establishment of new vendor sources during FSED and the early phases of initial productions

2. The prime contractor's additional engineering, design, and management effort to accomplish the objectives set forth in his proposal(s) for this express purpose should be a separately priced line item in the pertinent FSED contract.

3. The instant FSED contract should provide for an Award Fee modeled on the "report card" concept. It should provide for an award fee determination panel composed of high levels of government management; periodic evaluations to influence prospective behavior; written critique by the Service Secretary to the CEO; the immediate payment of all award fee amounts earned; and no rights of appeal.

4. The instant FSED contract should provide for a separate Memorandum of Agreement (MOA) between the prime contractor and the government. It would be negotiated with all offerors while still in proposal evaluation and source selection. The purpose for the MOA is to get advance agreement on the amount of the royalty and/or the licensing fee to be included in selected vendor prices. The fee arrangement would be expressed as a percentage of the item price paid by the government. Then, should those vendors later be awarded a contract directly by the government, the agreed-upon fee (having been included in the price) would be paid to the prime contractor by the vendor. A licensing fee would be proper if contract effort involved utilization of the prime contractor's proprietary data; a royalty fee would be proper when the prime's propietary data is not a factor. The MOA would prescribe the term of years within which the agreement would be in force and on whom it would be binding. Any fees paid pursuant thereto would be in the purchase price of the vendor item--hence, it would be borne by the user. However, care must be exercised to avoid payment of royalty fees for break out that would and should have been otherwise accomplished as part of the contractor's normal responsibilities.

CONCLUSION: The proposed solution offers an immediate incentive. It can influence and even prove a determinant in proposal evaluation and source selection for a major system. It focuses attention on the problem early on, before design is complete and a subcontractor/vendor matrix established. By directly funding the contractor's associated effort, it does not increase his overhead costs and also becomes a direct cost on which other overhead can be charged and profit earned. However, as a direct cost, it must be done and done in accordance with the contract's terms and conditions. It is subject to government oversight. The award fee offers a near-term incentive while focusing high level management attention on the effort. The licensing and/or royalty fee arrangement offers a long-term and continuing incentive to make the program succeed because it returns profits to the prime without any investment of capital or on-going utilization of production resources. The arrangement can also be flowed down. It eradicates by offset all the incentives presently in-place that inhibit breakout, competition, and contractor assistance. It employs practices well known to the contracting community both in the private and public sector. It need await no special approvals or authorities to be tested or implemented. It does not add to procurement leadtime and, in competition, it should add little or no cost to FSED.

RECOMMENDATION: Immediately develop a TEST PROGRAM leading to full-scale implementation. The initial resultant guidance should be expressed in no greater detail than policy direction as would be found in a Directive or an Instruction. At an appropriate time, suitable DAR coverage could be published.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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SEP 2 1983

MEMORANDUM FOR THE PRESIDENT

FROM: David A. Stockman

SUBJECT: Fifth Progress Report on the Implementation of Executive Order 12352, "Federal Procurement Reforms"

Attached is a copy of the fifth quarterly report on the Implementation of Executive Order 12352. You issued Executive Order 12352 on March 17, 1982. The Order requires that executive agencies and departments initiate specific procurement reforms to ensure effective and efficient spending of public funds. The attached report summarizes the actions taken by the agencies and departments during the April 1, 1983 to June 30, 1983 quarter. Major actions highlighted in the report are:

1. The completion of efforts to draft a new Federal Acquisition Regulation. Executive agencies and departments, primarily the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration, have expended hundreds of manyears of effort over the last several years to develop a single, combined procurement regulation. The drafting and final review of this regulation was completed during the quarter. The new regulation, the Federal Acquisition Regulation, will eliminate approximately 33,000 pages of existing regulations and will greatly improve the business interface between government and private industry in Federal contracting matters.

2. The Department of Defense, working directly with Dr. Devine, Director, Office of Personnel Management, reached agreement this quarter with OPM on major issues involved in the issuance of new Classification and Qualification Standards for GS-1102 Federal procurement personnel. DOD received concurrences from the major procuring agencies including the Department of Energy, NASA, and GSA on the compromise finally worked out with OPM. The compromise will enable the Executive Branch to attract and maintain professional caliber personnel for the procurement work force and to ensure, at the same time, that the personnel are assigned to the proper grade levels.

3. The issuance of specific policy documents by OMB's Office of Federal Procurement Policy. Policy documents issued this quarter pertain to: (1) the need to control construction contract change orders; (2) the elimination of the routine withholding of funds from construction contract progress payments; (3) clarification of existing policies for contracting with architect-engineers, and (4) the establishment of formal procedures for ensuring public participation in the development of Federal procurement policies, regulations and forms. These guidance documents are expected to result in significant savings and will eliminate potential sources of fraud, waste and abuse.

Attachment

QUARTERLY REPORT
FOR THE PRESIDENT
ON THE
IMPLEMENTATION
OF
EXECUTIVE ORDER 12352

April 1, 1983 To June 30, 1983

OFFICE OF MANAGEMENT AND BUDGET

EXECUTIVE SUMMARY

This is the fifth quarterly report to the President on executive branch implementation of Executive Order 12352, Federal Procurement Reforms.

Executive Order 12352 was issued in March 1982 to improve the effectiveness of the Government's procurement system. Procurement expenditures totalled approximately $160 billion in FY 1982 -- about one-fifth of the Federal budget. Significant savings in this program are expected once the entire procurement reform effort is implemented, a process expected to take 3-5 years.

Executive Order 12352 is organized in 4 sections and requires:

Section 1. The implementation of specific management and procurement process reforms by all agencies engaged in the procurement of products and services from the private sector;

Section 2. The National Aeronautics and Space Administration (NASA), the General Services Administration (GSA), and the Department of Defense (DOD) to consolidate their procurement regulations into a single, simplified Federal Acquisition Regulation;

Section 3. The Director of the Office of Personnel Management, in consultation with agency and department heads, to ensure that personnel policies and classification standards meet agencies' needs for a professional procurement work force; and

Section 4. The Office of Federal Procurement Policy, an element within OMB, to provide broad policy guidance and overall leadership necessary to achieve specific procurement reforms.

This report focuses primarily on those actions being taken to implement Section 2 of the Executive order; i.e., the completion of the new Federal Acquisition Regulation (FAR) by DOD, GSA and NASA and implementation by all agencies. The FAR is a single, combined regulation being developed to replace the existing Federal Procurement Regulations and major portions of the existing Defense Acquisition Regulation and NASA Procurement Regulation. The FAR system will ultimately eliminate approximately 33,000 pages of procurement regulations.

Development of the FAR has been underway for several years. Final agreement on the content was reached during this quarter. The FAR will be published in the Federal Register in September, 1983. Printing of the entire document is scheduled for October 1983 and distribution to the Executive agencies will be completed in December 1983. The effective date of the FAR for all agencies is April 1, 1984.

The completion, issuance, and implementation of the FAR will be a major milestone in the history of Government procurement and regulatory reform. The actions highlighted in the report indicate that this milestone will be achieved. Significant accomplishments during this quarter include:

1. Completion of Phase II of the FAR program. This phase involved the review, analysis, and disposition of 17,000-20,000 comments received from Federal agencies and private industry in response to the publication of the draft regulation in the Federal Register.
2. Completion of a final review by the major procuring agencies and departments, which included some clarification before their approval of the entire regulation.

In addition to the status of the FAR, the report provides summaries of the actions taken by the several agencies and departments to implement other specific reform initiatives specified in the Executive order. The progress being made by the Executive Committee on Procurement Reform is also provided.1/ This Committee reviews and approves the specific modules now being developed to reform the procurement systems.2/

1/ The Executive Committee on Procurement Reform was established and chartered by the Office of Federal Procurement Policy. The purpose of the Committee is to develop uniform guidance for the procurement reforms required by Executive Order 12352. The Committee consists of representatives from the 8 agencies responsible for 94% of all Government procurement plus representatives from OPM and SBA.

2/ A module is a suggested administrative, regulatory, or legislative change for improving the present procurement system. The modules are developed by interagency task groups under the leadership of the Executive Committee.

I. Actions Taken to Implement Section 1 of the Executive Order

During the quarter, 19 specific modules for improving the procurement process were completed. These modules were developed by task groups of the Executive Committee on Procurement Reform and cover such diverse topics as:

- Better use of automation to improve the procurement process and the productivity of the procurement work force;
- Simplification of contract documents, formats, and bid and proposal sets;
- Improved contract administration procedures;
- Consolidation, simplification and reduction of contract reporting requirements; and
- Specific administrative, regulatory, and legislative changes necessary to improve the placement and award of Federal contracts.

The 19 improvement modules are now being reviewed by the Executive Committee. As a result of this review, which is scheduled to be completed by November 30, 1983, guidance for agency use of the modules will be finalized. The guidance documents will be developed concurrent with the review and acceptance of each module and will be issued by the Office of Management and Budget. The impact of the reform modules will be to reduce paperwork and improve contracting efficiency. First results are expected as early as December and will benefit both Government offices and private firms doing business with the Government.

In addition to the 19 guidance modules, the Executive Committee continued during the quarter to develop models that agencies and departments can use in:

- Establishing clear lines of contracting authority and accountability within their organizations;
- Developing criteria to be used in evaluating procurement system performance;
- Simplifying small purchase procedures; and
- Improving procurement career management programs for Federal procurement personnel.

The interagency task groups working on the development of these models are on schedule. Two of the models are to be completed in August and the remaining ones will be finished prior to the end of the year.

II. Actions Taken to Implement Section 2 of the Executive Order

Section 2 of the Executive Order pertains to the completion of the single, simplified FAR. Significant progress was achieved during this quarter by the three agencies (DOD, NASA and GSA) responsible for developing this new regulation. Specifically, analysis was completed of all public and agency comments received in response to the published draft of the regulation. Final editing of the entire text was completed, and the text was reviewed and approved by the major procuring agencies. The completion of the Executive Review of the final edited text concludes a five-year drafting effort involving hundreds of manyears of effort.

Full implementation of the FAR in April 1984 depends on the preparatory actions now being taken by the respective agencies and departments. The more significant of these actions reported by the agencies and departments during this quarter include:

- Department of Energy. DOE continued its efforts to convert the DOE procurement regulation to the DOE acquisition regulation, which will implement the FAR. DOE anticipates a 50% reduction in the volume of its procurement regulatory system as a result of this conversion.

- Department of Defense. DOD established a Federal Acquisition Regulation Implementation Steering Committee during the quarter. This committee will establish a focal point within the DOD for departmental FAR implementation. Other DOD efforts to prepare for FAR implementation include the identification of required changes and reprogramming of its automated data systems; the approving, printing and distributing of necessary forms; the assessment of organizational changes; and the establishment of DOD-wide training programs.

- Department of State. The Department of State has established a specific milestone program for implementing the FAR. Specific tasks have been identified and initial steps are being taken to write the new Department of State procurement regulations. In addition, procurement forms containing solicitations-contract clauses are being developed, a solicitation clause handbook is being revised, and training needs are being identified to provide for an efficient transition from existing procedures to the new FAR.

- Department of the Interior. Interior has established October 1983, as the date for publishing its proposed FAR supplement. A planning meeting was held to develop a program for familiarizing the affected Interior work force with the FAR, and an automation review was begun of its small purchase transactions program (transactions under $10,000).

- National Aeronautics and Space Administration. NASA played a lead role during the quarter in developing the new proposed Government-wide patent and data policy. This policy is based on the President's policy memorandum of February 18, 1983, and is incoporated in the FAR. NASA reported, also, that progress continued on the development of its FAR supplement regulation and that publication is targeted for December 15, 1983. FAR training issues such as training strategy, team structure and staffing, tentative training schedules, and the general subject areas for the training, have been resolved. Modification of existing automated programs is now being accomplished and will continue through the first quarter of FY 1984.

- Veterans Administration. VA developed a plan calling for the completion of the Veterans Administration acquisition regulation by January 1984. Training of VA personnel will be accomplished by using the FAR training materials being developed by the General Services Administration, and by using a cross-reference manual now being developed to provide references between the existing VA regulations and the FAR. The VA automated systems will be updated to accommodate the FAR on an installation basis between now and December 1983.

- Environmental Protection Agency. EPA indicated it has reduced the size of its "solicitation package" by 50% as a result of adopting the proposed FAR format.

- General Services Administration. GSA commenced converting the existing 700-page GSA Procurement Regulation to the GSA Acquisition Regulation. The GSA Acquisition Regulation will supplement the FAR. Work continued also during the quarter on a FAR training course. This course will contain all necessary materials (viewgraphs, written text, printed handouts and videotape) to familiarize procurement personnel with the FAR. The course is being designed to permit maximum flexibility in reaching the 130,000(+) Government personnel involved in the procurement process. The course may be presented by GSA, client agency or contract instructors.

- Department of Transportation. The major FAR action in DOT has occurred in the Coast Guard. The Coast Guard is preparing a procurement instrument composition system. This is an automated system that will use the Federal Acquisition Regulation as a data base. Other operating elements in DOT are reviewing the Coast Guard system to determine whether to adopt it, in whole or in part. DOT reported that it has not commenced developing its FAR supplement, but that it anticipates publishing it in the Federal Register for public comment prior to April 1, 1984. The supplement must be effective as of April 1, 1984, and this late start will require an expedited effort to avoid a lapse in regulatory coverage.

- Department of Justice. DOJ has just begun to develop programs for the implementation of the FAR and for the necessary training of its procurement personnel. The Department reported it did not have any activity for this particular reporting period, but that its next report will reflect significant action.

One problem reported by several agencies, with regard to preparing for FAR implementation, is that efforts to develop necessary supplementary regulations are being impeded by not having the final version of the FAR. This problem will be resolved in September 1983, with the publication of the FAR in the Federal Register. Plans have also been made to provide advance copies of the page proofs to the agencies in August. The page proofs will be sufficient to initiate the preparation of the supplementary regulations.

III. Actions Taken to Implement Section 3 of the Executive Order

The Department of Defense, working directly with Dr. Devine, Director, OPM, reached agreement with OPM on the major issues involved in the dispute over the GS-1102 classification and qualification standards for procurement personnel. DOD has received concurrences from DOE, NASA, and GSA on the compromise language worked out with OPM. The OFPP-OMB concurs with the compromise.

IV. Actions Taken to Implement Section 4 of the Executive Order

The Office of Federal Procurement Policy chaired three monthly meetings of the Executive Committee on Procurement Reform held during the quarter and a meeting of the entire Federal Procurement Council (24 agencies). The OFPP also conducted a meeting for industry associations held in April. The purpose of the industry meeting was to provide for a cross-flow of information between the Government and the private sector on the procurement reform effort.

In addition to conducting the agency and industry meetings, specific policy guidance was issued during the quarters to the heads of executive agencies and departments. This guidance included:

1. Office of Management and Budget Memorandum, M-83-15, Construction Contract Change Orders, April 27, 1983. This memorandum was based on audit findings of the President's Council on Integrity and Efficiency. The memorandum directed agency heads to institute specific management and procurement practices to lessen the frequency of construction contract change orders. The Council's audit concluded that change orders provide a significant potential for waste, fraud, and abuse, and that improved management could result in savings of over $300 million annually.

2. Office of Federal Procurement Policy, Policy Letter 83-1, Retainage Policy for Federal Construction Contracts, May 6, 1983. This Policy Letter was issued to set forth Government-wide policy regarding the retention or withholding from progress payments made on Federal construction contracts. The Policy Letter provides that retention of funds should not be used as a substitute for good contract management and that Federal contracting officers should not withhold funds without cause. This letter is expected to help improve cash flow problems now being experienced by many subcontractors on Federal construction projects.

3. Office of Federal Procurement Policy, Policy Letter 83-2, Publicizing the Development of Procurement Policies and Regulations, May 25, 1983. Policy Letter 83-2 was issued to establish uniform criteria and procedures for use by executive agencies in soliciting the views of interested parties in the development of procurement policies, regulations, procedures, and forms. The Policy Letter establishes formal procedures for public participation in policy development by requiring agencies and departments to give notice in the Federal Register of all significant procurement regulations which will impact the private sector.

4. OFPP Policy Letter 83-3, Procurement of Architect-Engineer Services, June 8, 1983. This Policy Letter provides uniform policy guidance to be followed in the procurement of architect-engineer services. Procurement of these services now exceeds $1 billion per year. These procurements are conducted pursuant to the Brooks A-E Act (Public Law 92-582). The Policy Letter is expected to provide for more uniform implementation of the law and result in improved competition for some services.

V. Conclusion

Significant achievements in implementing Executive Order 12352 were accomplished during the April 1 to June 30, 1983, quarter. These achievements, however, are primarily preparatory to the major changes required to reform the procurement system. The progress made by the Executive Committee on Procurement Reform, coupled with the advance of the FAR system and the resolution of the position classification qualification standards issue are major milestones. The benefits to be derived from these efforts are, however, still several months away and their realization will continue to require the commitment and interest of officials at the highest levels of Government. Procurement reform under the Executive order is only commencing and a concerted effort is needed to maintain the present momentum.

APPENDIX C

PREPARED STATEMENT OF MR. DALE W. CHURCH, DEPUTY UNDERSECRETARY OF DEFENSE R&D (ACQUISITION POLICY)

Thank you, Mr. Chairman, for inviting the Department of Defense (DoD) to present an evaluation of the Office of Federal Procurement Policy (OFPP). I understand the importance of these hearings because they will provide the basis for the Committee's decision on legislation to continue the OFPP beyond August 1979.

I believe the DoD is well qualified to contribute testimony as an expert witness on this matter. The DoD obligates 70 percent of the Federal Government's acquisition funds. In FY 1978, we completed over 11 million contractual actions valued in excess of $67.0 billion and expect to exceed these figures in FY 1979. In the DoD acquisition process, we employ every conceivable type of contract covering the full spectrum of property and services. Our contracting personnel number 45,000 and, together with others in the DoD, are constantly trying to achieve the maximum efficiencies in the contracting process, as well as working to improve our policies, procedures, and practices.

In order to properly evaluate the performance of the OFPP, I believe we must first review why such an organization was established and what were its intended objectives.

The stated purpose of P. L. 93-400 was to improve economy, efficiency, and effectiveness in the acquisition of property and services by the executive agencies. Under the law, the OFPP was created in 1974 to provide overall direction of procurement policy and "with due regard to the program activities of the executive agencies" to prescribe policies, regulations, procedures, and forms of executive agencies in accordance with applicable laws.

Further, the functions of the Administrator shall include:

"(1) establishing a system of coordinated, and to the extent feasible, uniform procurement regulations for the executive agencies;

"(2) establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

"(3) monitoring and revising policies, regulations, procedures, and forms relating to reliance by the Federal Government on the private sector to provide needed property and services;

"(4) promoting and conducting research in procurement policies, regulations, procedures, and forms;

"(5) establishing a system for collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the executive branch, and the private sector;

"(6) recommending and promoting programs of the Civil Service Commission and executive agencies for recruitment, training, career development, and performance evaluation of procurement personnel."

Based on a comparison of the OFPP's performance against these functions, our assessment is during the four years of its existence it has only addressed these functions with very limited success. The expected significant improvements over the general conditions noted by the Commission on Government Procurement in 1972 in terms of economy, efficiency, and effectiveness have not materialized. The continued existence of the general conditions validates these objectives, and much work is left to be done.

Having concluded these objectives are still valid and considering how much still needs to be accomplished, the next question to examine is whether OFPP's approach to achieving these objectives has been effective and rational.

Let me emphasize this next point:

We believe that the deficiencies noted below regarding OFPP's performance should not be attributed to the diligence of its Administrator who has worked hard to fulfill the objectives.

We believe most of the problems with the OFPP have their origin in the report of the Commission on Government Procurement that created expectations of accomplishment far beyond the capability of any such centralized group. The result has been the Administrator constantly being pressured by many disparate parties to take on trivial problems or those which are well beyond the OFPP's capability.

In order to be more specific, we have reviewed the OFPP's activities over the four years of its existence. Our review discloses during this period the OFPP has initiated activity in several areas. They supported a new statute on disputes, the establishment of the Federal Acquisition Institute, and a new Government-wide acquisition statute. Work in progress includes programs to establish uniform procurement regulations; to establish a data system; and to design improved personnel functions. Other important efforts include those to provide for greater reliance on the private sector (A-76) and to increase emphasis on the acquisition of commercial products. These types of efforts would appear to be well within the capabilities of a broad overview organization such as the OFPP.

However, notwithstanding their positive efforts, there are other at least equally, if not more, important areas where the OFPP has been ineffective in resolving certain problems. For example, Department of Labor interpretations of the Service Contract Act have presented serious problems to the DoD for a number of years. It constitutes a classic situation which detracts from the economy, efficiency, and effectivity of the contracting process. In our opinion, this is the best example of a problem resulting from competing objectives within two or more executive agencies which affect the acquisition process. Yet, after 4 years of effort and still trying, the OFPP has been unable to solve this problem.

Another troublesome area is in the socio-economic field. The contracts function has long been used to implement socio-economic programs. When considered individually, we cannot take issue with them; but, collectively, they disrupt the acquisition process. We look to the OFPP to minimize this disruptive effect by carrying out the recommendations of the Commission on Government Procurement to establish a program for the Legislative and Executive Branches' re-examination of these socio-economic programs and to raise to a uniform $10,000 level the threshold for their application. We also expect the OFPP to act as liaison with the various Federal agencies responsible for these programs to assure that disruptive effects are minimized. While the OFPP has accepted the Commission's recommendations, no results have been achieved.

Another example is the implementation of P. L. 94-580 relating to resource conservation and recovery and P. L. 94-163 relating to energy conservation. Thus far, only general policy statements have been forthcoming from the OFPP with no detailed guidance to purchasing offices as to how these laws can be effectively applied to the contracting process. If the contracting process is to effectively reflect the provisions of these two Acts, there is a need for better guidance from the OFPP through coordination with the Environmental Protection Agency and the Department of Energy.

Examples of overly long projects are the development of policies on organizational conflict of interest and bid protests. In these important areas, policy statements have yet to be issued.

If the OFPP were to concentrate its effort on major policy areas of this nature, it could be more effective in achieving its objectives. However, it has expanded its efforts to include matters that are peripheral to the contracting process or involve the daily operational affairs of the agencies. Examples of those that could be given lower priority would include the national supply system, debarment and suspension, criteria for real property assignments, modern cost analysis and estimating, patent policy, contracting for production of films, model state and local government purchasing code, Federal interaction with voluntary standards bodies, and the program-by-program review of A-109. As a result, we believe many actions are unnecessarily bogged down. If the OFPP is to continue, their limited manpower capability should be concentrated on those policy level projects which relate to economy, efficiency, and effectiveness in Government acquisition of property and services.

Another way to analyze the value of the accomplishments to date is to review the question of whether or not such accomplishments could or would have been achieved without the existence of an OFPP.

Although such an analysis is speculative in nature because the OFPP did exist and there were some successes as noted above, I believe, with the notable exception of A-76, these accomplishments could have been done within the contracting agencies. So the final questions to ask are whether or not there is a continuing need for such an organization and, if answered in the affirmative, whether or not the OFPP is properly constituted and organized to achieve this need.

As stated above, the general conditions noted by the Commission still exist, and much still needs to be accomplished to improve the efficiency of the contracting process. The current efforts on the Federal Acquisition Regulation being conducted by DoD and GSA will result in an excellent new regulation, but some group with Government-wide perspective will be required to insure the uniformity of implementation and that the regulations are kept current with the needs. Therefore, the answer to the continuing need question is affirmative.

To fill the need, the DoD supports the existence of a small central office for acquisition policy operating within the Office of Management and Budget. However, to insure the success of this office, we recommend the OFPP focus its efforts on top-level policy which:

1. Assists in the formulation and enactment of new legislation;
2. Opposes the continuation or enactment of inappropriate legislation;
3. Issues broad acquisition policies, leaving detailed implementation to the agencies;
4. Arbitrates disputes between agencies;
5. Presents and supports Executive Branch acquisition policy requirements before Congress.

APPENDIX D

TESTIMONY OF STUART J. EVANS, DIRECTOR OF PROCUREMENT, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Mr. EVANS. Thank you, Mr. Chairman.

NASA is pleased to have this opportunity to present to your subcommittee our assessment of the Office of Federal Procurement Policy.

Our last appearance before this subcommittee to present our views on this office was on November 1, 1973. At that time we expressed the belief that procurement throughout the Government should be coordinated and consistent where practical. However, uniformity of policies and practices should not be sought as an objective in and of itself, but only when good judgment dictates that it is desirable. While we supported the overall objectives of S. 2510, we expressed reservations as to the potential for creating an undesirable degree of uniformity inhibiting flexibility on the part of individual agencies to adopt regulations which they believed necessary for the proper conduct of their operations. We were skeptical of the desirability of concentrating the powers proposed by S. 2510 in a single entity divorced from operations and, we foresaw the potential for creation of a large organization with polity and regulatory authority without responsibility for its execution within the parameters of the various and unique agency missions.

We expressed these views as a fundamental research and development agency wholly dependent upon the ability to foster and capitalize upon a continual flow of innovative thought and technology advance. In our 20 years as a unique agency and national resource, we have been overwhelmingly dependent upon a sensible, flexible, and innovative procurement process to maintain a national government, scientific, educational and industrial partnership in U.S. space and aeronautics.

For an agency which performs its mission by spending over 80 percent of its appropriated funds through the procurement process in reliance on various segments of the private sector, a mature sensible procurement policy is vital. We still hold this view. We believe that Public Law 93-400 wisely included a "sunset" provision which necessitates an examination of the performance and value of OFPP over the last 4½ years incident to determining the merits of continuing its role. We have attempted to do so in presenting our assessment today.

Since previous testimony before this subcommittee has set out in some depth the functions and specific tasks imposed upon OFPP, we shall not enumerate them again but confine ourselves to an assessment of the impact that OFPP performance has had upon NASA and our ability to carry out the mission assigned by the National Aeronautics and Space Act. We also believe that NASA should assess the OFPP in large part with regard to their leadership and contributions made to improving the acquisition process which would facilitate a more economical and efficient operation.

The first recommendation of the Commission on Government Procurement was to establish by law a central Office of Federal Procurement Policy in the Executive Office of the President with specialized competence to take the leadership in procurement policy and related matters. The Commission report stated that creation of a central policy office had been placed first among the Commission recommendations because of its overall importance in achieving the improvements proposed in the procurement process. It is also significant to note that the Comptroller General, in his testimony on S. 2510 to establish the OFPP, recommended that the OFPP be established by legislation to provide the executive branch with the necessary mandate, stature, authority, and continuity so essential to basic procurement reform.

The Commission also recognized that there was no single point in the executive branch responsible for policies that govern the procurement process, and that there was no focal point to meet the demands for information, guidance, and assistance from industry, Government, and the Congress on matters involving Governmentwide procurement policies. It was further recognized that there was no strong central leadership of the various segments of Government which made or strongly influenced acquisition policy.

In our judgment OFPP has clearly filled these needs and discharged the very significant responsibilities placed upon it for central direction and guidance in a mature, professional, and temperate manner. Aside from vastly broad and diverse acquisition operations of the Federal agencies which must be considered in developing uniformity in policy and guidance, OFPP has likewise had to consider the substantial impact of these operations on all segments of the private sector in a manner giving full consideration to many, different, and legitimate interests. The forum provided by OFPP for this purpose is unique and we believe, on balance, that this Office has performed an extremely difficult, somewhat unenviable Solomon-like role in a mature credible manner. We have not always agreed with all of their product; however, our views are sought, considered, and reasonably accommodated in policies developed that reflect due regard to our unique mission along with the broader range of issues which we recognize must also be addressed.

In this respect, the intentional small size of this Office and the need to consult with and rely upon procuring agencies for assistance in policy development has been of marked benefit to NASA in several ways. The opportunity to participate in and contribute to policy deliberations has afforded us a new and important forum at a high level to describe and explain our operations, imparting a valuable insight to policy framers. Concurrently it provides us an opportunity to propose worthwhile NASA innovations for agencywide application and simultaneously adopt other agency improvements in our system.

OFPP projects in which NASA has been involved include the areas of major systems acquisition, initiation of a single, uniform acquisition regulation, revision of the policies and procedures for contracting out, protection of professional employees against wage busting, uniform guidance for Federal use of consultants, use of Federal contracting to help combat inflation, and development of career programs and topics for acquisition research through the Federal Acquisition Institute. While we defer to the General Accounting Office regarding the progress made by OFPP in implementing the 149 recommendations of the Commission on Government Procurement, our overall assessment of OFPP's performance, to date, is that they have performed well in relation to their assigned functions.

This is not to say that there have been no problems, which is true wherever difficult and complex issues are faced. We have, in several projects, believed that OFPP did not initially recognize and take into consideration the operational implications of its proposed policies on the programmatic or mission objectives of NASA. Examples of this include proposed policies on major systems acquisition and the revision of OMB Circular A–76 regarding policies and procedures for contracting out. In this connection, the proposed policy on the OMB Circular A–76 created serious NASA concerns regarding the implications and ramifications which would flow from issuance of the revised circular. As initially proposed, we estimated that issuance of that circular could have reversed the NASA-private sector balance which NASA relies upon to assist in program accomplishments. Nevertheless, following close consultation with the OFPP, the NASA concerns were largely accommodated so that the final revisions of these directives are more workable.

Another OFPP project which required substantial NASA involvement in working out the details of the final implementation was that involving the protection of professional employees from "wage busting" under Federal service contracts. In view of the heavy NASA involvement in service contracts, we were concerned that the proposed OFPP regulations on the subject would not be consistent with what significant experience had taught us was necessary for the protection of professional employees and the achievement of mission objectives. To resolve this issue, we met with representatives of the Department of Defense, and, jointly with them, proposed an alternative regulation which we believed to be compatible with recognized procurement procedures and otherwise workable. Such consultation was highly productive and the implementing regulations approved by OFPP have worked well, from all indications received.

We believe that the projects undertaken by OFPP could not have been initiated or achieved as quickly and effectively without the leadership they displayed together with the authority of the Office. In particular, the OFPP has demonstrated commendable initiative in instituting the project to consolidate and replace existing procurement regulations with a single, uniform acquisition regulation for all Federal executive agencies as recommended by the Procurement Commission.

This project takes on added significance since it forms a major provision of the proposed Federal Acquisition Reform Act—Senate bill S. 5—which you introduced, Mr. Chairman. Further, the OFPP has provided a centralized forum wherein all interested parties, including the Government and the private sector, may express their viewpoints with respect to proposed changes in the laws and regulations affecting procurement.

We also believe that the accomplishments of the OFPP take on greater significance when the properly small size of the OFPP staff is factored in to the assessment.

This office of some 32 people has been tasked with a number of longstanding, difficult, and often controversial issues to consider and resolve. In the light of this, we consider their accomplishments to be significant and quite remarkable. There remains, however, much to be accomplished. An office of this nature has, in our judgment, demonstrated itself to be the most effective means yet found to achieve the overdue changes recommended by the COGP.

Mr. Chairman, it is our view that the need for a single point in the executive branch responsible for policies that govern the procurement process is as pressing today as it was during the period of the Procurement Commission's studies. Many significant projects involving complex issues have been initiated—some have been completed and others are in various stages of completion. Other projects, career development and training, profit policy, and R. & D. acquisition policies will have to be addressed in the future. We are concerned that without the central office which the OFPP represents, a void will again occur and create the situation which gave rise to the Procurement Commission recommendations to establish the OFPP.

Accordingly, based on our assessment of the value and importance of the OFPP, we recommend that OFPP be continued for another 5 years and that it remain as an integral part of the Office of Management and Budget. We believe that this is necessary as its placement in any other executive agency could diminish its authority, and consequently, its ability to lead and contribute meaningfully to the improvement of the procurement process.

Mr. Chairman, this concludes my prepared remarks. I will be happy to respond to any questions you may have.

Senator CHILES. Thank you, Mr. Evans.

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